

20170300

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

NOV 01 2017

Trent Allen Guthmiller,)
)
 Appellant,)
)
 v.)
)
 Director, North Dakota)
 Department of Transportation,)
)
 Appellee.)

STATE OF NORTH DAKOTA
Supreme Ct. No. 20170300
District Ct. No. 08-2017-CV-00218

**APPEAL FROM THE DISTRICT COURT
JUDGMENT DATED JUNE 8, 2017
BURLEIGH COUNTY, NORTH DAKOTA
SOUTH CENTRAL JUDICIAL DISTRICT**

HONORABLE BRUCE ROMANICK

BRIEF OF APPELLEE

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STATEMENT OF ISSUE

[¶1] Whether the 60 day disqualification of Guthmiller's commercial driving privileges was in accord with N.D.C.C. § 39-06.2-10(15)?

STATEMENT OF CASE

[¶2] Appellant, Trent Allen Guthmiller (Guthmiller) holds a commercial driver's license. On February 19, 2013 Guthmiller committed a violation of speeding 69 miles per hour (mph) in a 50 mph zone. Appendix of Appellant (App.) 5. Guthmiller was convicted of this offense on February 26, 2013. Id. On March 14, 2015 Guthmiller was cited for Aggravated Reckless Driving. App. 5; Transcript (Tr.) Exhibit (Ex) 1c. Guthmiller was convicted for this offense on October 24, 2016. App. 5; Tr. Ex. 1c. Guthmiller does not contest these violations constitute "serious traffic violations" under N.D.C.C. ch. 39-06.2. App. 7, l. 8 – App. 8, l. 2.

[¶3] On October 26, 2016 the Department issued an "Order of Disqualification for Two (2) Serious Violations Within Three Years" to Guthmiller by mail. Appendix to Brief of Appellee (Dept. App.) 1. On November 1, 2016 Guthmiller timely requested a hearing on the proposed 60 day disqualification of his commercial driver's license. Tr. Ex. 1b. An administrative hearing was scheduled and held on December 20, 2016. App. 6; Tr. Ex. 2. The hearing officer determined that the information in the Department's records was correct but concluded that the proposed period of disqualification could not be imposed under N.D.C.C. § 39-06.2-10(15) because the dates of convictions of

Guthmiller's two serious traffic violations were not within a three-year period. App. 10.

[¶4] On December 30, 2016 the Department reviewed and reversed the hearing officer's recommended decision concluding that the emphasis of the statute is "*on the number of serious offenses committed within the given time frame*, not the date the individual was convicted of those offenses." App. 11-12. Since Guthmiller's two serious traffic violation offenses occurred within a three-year period the Department imposed a 60 day disqualification on his commercial driving privileges. Id.

PROCEEDINGS ON APPEAL TO DISTRICT COURT

[¶5] Guthmiller requested judicial review of the hearing officer's decision by the Burleigh County District Court. App. 13-14. At the hearing and on appeal Guthmiller argued he was not convicted of two offenses within a three year period, alleging the date of conviction is the determining factor under N.D.C.C. § 39-06.2-10(15). App. 15. The Department however had interpreted the statute to require only that the serious traffic violation offenses occur within a three year period. Id. The district court concluded that "both interpretations of the statute are reasonable when looking only at the plain language of the statute." App. 19. Because the statute was ambiguous, the court looked to the purpose of the legislation, the circumstances under which it was enacted, and the statute's legislative history, the consequences of a particular action, and administrative construction of the statute" as aides in helping to interpret the Legislature's intent in enacting N.D.C.C. § 39-06.2-10(15).

[¶6] The district court noted that the “object sought by the 2003 amendments to N.D.C.C. § 39-06.2-10(15) was ‘to conform North Dakota law to the Motor Carrier Safety Improvement Act of 1999.’” App. 19. The district court determined the legislative history and other aides supported the Department’s final decision to disqualify Guthmiller from driving a commercial motor vehicle for 60 days. App. 21.

STANDARD OF REVIEW

[¶7] The Administrative Agencies Practices Act governs an appeal from the Department’s decision disqualifying a commercial driver’s license. N.D.C.C. ch. 28-32; N.D.C.C. ch. 39-06.2. This Court reviews the administrative disqualification of a commercial driver’s license under N.D.C.C. § 28-32-46. This Court must affirm the agency’s order unless:

1. The order is not in accordance with the law.
2. The order is in violation of the constitutional rights of the appellant.
3. The provisions of this chapter have not been complied with in the proceedings before the agency.
4. The rules or procedure of the agency have not afforded the appellant a fair hearing.
5. The findings of fact made by the agency are not supported by a preponderance of the evidence.
6. The conclusions of law and order of the agency are not supported by its findings of fact.
7. The findings of fact made by the agency do not sufficiently address the evidence presented to the agency by the appellant.
8. The conclusions of law and order of the agency do not sufficiently explain the agency's rationale for not adopting any

contrary recommendations by a hearing officer or an administrative law judge.

Id.

[¶8] The Department's findings of fact must be upheld if they are supported by a preponderance of the evidence. Kahl v. Dir., N.D. Dep't of Transp., 1997 ND 147, ¶ 10, 567 N.W.2d 197. A court does not make independent findings of fact or substitute its judgment for that of the agency. Vanlighthout v. N.D. Dep't of Transp., 2011 ND 138, ¶ 12, 799 N.W.2d 397. A reviewing court, rather, 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.) "An agency's decision on questions of law are fully reviewable." Kiecher v. N.D. Dep't of Transp., 2005 ND 23, ¶ 8, 691 N.W.2d 266 (quoting Huff v. Board of Medical Examiners, 2004 ND 255, ¶ 8, 690 N.W.2d 221).

[¶9] "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 Department's 60 day disqualification of Guthmiller's commercial driving privileges is in accord with N.D.C.C. § 39-06.2-10(15).

[¶10] The appeal hinges on the statutory interpretation of N.D.C.C. § 39-06.2-10(15). That statute states:

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 the revocation, cancellation, or suspension of an operator's license, including a commercial driver's license.

Id. North Dakota law mimics the Federal Commercial Motor Vehicle Safety Act of 1986. N.D.C.C. § 39-06.2-01. The explicit purpose of the Commercial Driver's License chapter "is to implement the federal Commercial Motor Vehicle Safety Act of 1986 and Motor Carrier Safety Improvement Act of 1999 Id. The "chapter 'is a remedial law which should be liberally construed to promote the public health, safety, and welfare.'" Id. North Dakota adopted this statute in 1989.¹

[¶11] Statutory interpretation is a question of law, fully reviewable on appeal. GO Comm. ex. Rel. Hale v. City of Minot, 2005 ND 136, ¶ 9, 701 N.W.2d 865. The objective in interpreting a statute is to determine legislative intent by first looking at the language of the statute. Amerada Hess Corp v. State ex rel. Tax Comm'r, 2005 ND 155, ¶ 12, 704 N.W.2d 8. Words in a statute are given their plain, ordinary, and commonly understood meaning, unless defined in the code or unless the drafters clearly intended otherwise. N.D.C.C. § 1-02-02. And a statute is to be construed to give meaning to every word, phrase, and clause. State v. Syring, 524 N.W.2d 97 (N.D. 1994); N.D.C.C. § 1-02-38. Statutes are construed as a whole and are harmonized to give meaning to related provisions. N.D.C.C. § 1-02-07. This Court will harmonize statutes if possible to avoid conflicts between them, and the Court's

¹ The language at issue in N.D.C.C. § 39-06.2-10(15) was first introduced in 2003 as N.D.C.C. § 39-06.2-10(14). See 2003 N.D. Sess. Laws Ch. 322, § 5. The statute was amended and moved to subsection 15 in 2013. See 2013 N.D. Sess. Laws Ch. 298, § 9.

statutory interpretation “must be consistent with legislative intent and done in a manner [to further] the policy goals and objectives of the statutes.” Haugenoe v. Workforce Safety and Ins., 2008 ND 78, ¶ 8, 748 N.W.2d 378 (quoting Rojas v. Workforce Safety and Ins., 2006 ND 221, 723 N.W.2d 403). If the language of a statute is clear and unambiguous, “the letter of [the statute] is not to be disregarded under the pretext of pursuing its spirit.” N.D.C.C. § 1-02-05. A statute is ambiguous if it is susceptible to different, rational meanings. Amerada, at ¶ 12. If the language of a statute is ambiguous or doubtful in meaning, a court may consider extrinsic aids, such as legislative history, to determine legislative intent. N.D.C.C. § 1-02-39.

[¶12] “Ordinarily, determinations of an administrative body are presumed to be correct and valid.” Barnes Cnty. v. Garrison Diversion Conservancy Dist., 312 N.W.2d 20, 25 (N.D. 1981). An agency is also afforded a “reasonable range of informed discretion in the interpretation and application of its own rules.” Bottineau Cnty. Water Res. Dist. v. N.D. Wildlife Soc’y, 424 N.W.2d 894, 900 (N.D. 1988). Although interpretations of statutes are questions of law and are fully reviewable, “[w]hen an administrative agency’s interpretation of a [statute] does not contradict the clear and unambiguous language of the [statute], its interpretation is entitled to some weight.” Americana Healthcare Ctrs.-Minot & Fargo v. N.D. Dep’t of Human Servs., 510 N.W.2d 592, 594 (N.D. 1994).

[¶13] The hearing officer and Guthmiller interpreted N.D.C.C. § 39-06.2-10(15) to require that the convictions must occur within a three-year period, while the Department interpreted the statute to require that the serious traffic violation

offenses must occur within a three-year period. Both readings are reasonable under the statute.

[¶14] Since N.D.C.C. § 39-06.2-10(15) may be interpreted in different, yet entirely reasonable ways, the section is inherently ambiguous and the Court may use the full range of statutory construction aides provided in N.D.C.C. § 1-02-39. The purpose of the legislation, the circumstances under which it was enacted, the statute's legislative history, the consequences of a particular action, and administrative construction of the statute are all aides that may be used to interpret section 39-06.2-10(15).

[¶15] The primary objective of statutory construction is to ascertain the intent of the legislature. . . . When a statute is ambiguous, we look to the object sought to be obtained and to the circumstances under which the statute was enacted to determine the legislative intent." Ash v. Traynor, 2000 ND 75, ¶ 6, 609 N.W.2d 96. The current language of N.D.C.C. § 39-06.2-10(15) was introduced in 2003 through Senate Bill 2150. The object sought by the 2003 amendments was "to conform North Dakota law to the Motor Carrier Safety Improvement Act of 1999." See Hearing Before the Senate Transportation Committee of the 58th Legislative Assembly of North Dakota on Senate Bill 2150 (Statement of Keith Magnusson, Deputy Director of Driver and Vehicle Services). See Dept. App. 2-3. The purpose of the amendment to N.D.C.C. § 39-06.2-10 was to add to the law a number of disqualifications committed in a noncommercial vehicle which will impact a person's commercial driver's license because "the federal law attempts

to look at the 'whole' driver and not just conduct while driving a commercial motor vehicle." Id.

[¶16] The legislative history also includes four pages from the Federal Register regarding the Federal Motor Carrier Safety Administration Rules and Regulations for 49 CFR Part 383. See Dept. App. 4-7. Included in this material is Table 2 to 49 CFR § 383.51. The table indicates in pertinent part as follows:

<p>If the driver operates a motor vehicle and is convicted of:</p>	<p>For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .</p>	<p>For a second conviction or any combination of offenses in this Table <u>in a separate incident within a 3-year period</u> while operating a non-CMV a CDL holder must be disqualified from operating a CMV, if the conviction results in the revocation, cancellation, or suspension of the CDL holder's license or non-CMV</p>	<p>For a third or subsequent conviction of any combination of offense in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified form operating a CMV for ...</p>	<p>For a third or subsequent conviction of any combination of offense in this Table in a separate incident within a 3-year period while operating a non-CMV, a CDL holder must be disqualified from operating a CMV for ...</p>
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		driving privileges for . . .		
(1) Speeding excessively, involving an speed of 24.1 kmph (15 mph) or more above the posted speed limit.	60 days	60 days	120 days	120 days
(2) Driving recklessly, as defined by State or local law or regulation, including but, not limited to, offenses of driving a motor vehicle in willful or wanton disregard for the safety of persons or property.	60 days	60 days	120 days	120 days

Id. (emphasis added). The table consistently refers to the 3-year period looking back at the offense date or date of incident and not the date of conviction for

purposes of imposing the disqualification.

[¶17] Further, the Federal Motor Carriers Safety Administration has published interpretations to the regulations on its website. See fmcsa.dot.gov/regulation/title49/section/383.51. Under 49 CFR § 383.51 the following pertinent interpretation is provided:

Question 16: Must the State use the offense date or the conviction date to determine if two or more serious traffic convictions occurred within a 3-year period?

Guidance:

The State must use the offense date to determine if two or more serious traffic convictions fall within the 3-year period specified in 49 CFR 383.51 Table 2. If the conviction date were used, delays in bringing a case to trial could push the second conviction outside the 3-year period, thus defeating the purpose of the rule. For example, a driver is cited for a first serious traffic violation on February 1, 2001 and is convicted on March 1, 2001. The driver is cited for a second serious traffic violation on January 15, 2004. The trial is set for February 27, 2004, but the driver asks to have the trial delayed because he has something important to do that day. The new trial date is set for March 15, 2004 and he is convicted of the second violation on this date. If the conviction dates are used, the two offenses are not within three years of each other and no disqualification action is taken on the driver. If the offense dates are used, the driver is disqualified regardless of the conviction date because the offenses for which he was convicted are within three years of each other.

See Dept. App. 12. The Legislative history and Federal Motor Carrier Safety Administration Rules and Regulations clear up the ambiguity in the statute and support the Department's determination. Guthmiller's commercial driving privileges were properly disqualified for 60 days.

CONCLUSION

[¶18] The Department respectfully requests this Court affirm the judgment of the Burleigh County District Court and the Department's decision disqualifying

Guthmiller's driving privileges for a period of 60 days.

Dated this 15th day of November, 2017.

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AFFIDAVIT OF SERVICE
BY ELECTRONIC MAIL

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

¶1) Melissa Castillo states under oath as follows:

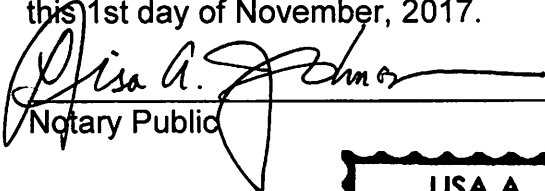
¶2) I swear and affirm upon penalty of perjury that the statements made in this affidavit are true and correct.

¶3) I am of legal age and on the 1st day of November, 2017, I served the attached **BRIEF OF APPELLEE and APPENDIX TO BRIEF OF APPELLEE** upon Trent Allen Guthmiller, by and through his attorney Michael R. Hoffman, by electronic mail as follows:

Michael R. Hoffman
Attorney at Law
hoffmanmike@yahoo.com


Melissa Castillo

Subscribed and sworn to before me
this 1st day of November, 2017.


Notary Public

