

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Malcolm B. Stokes, :
Appellant :
v. : No. 968 C.D. 2007
Commonwealth of Pennsylvania, : Submitted: January 11, 2008
Department of Transportation, :
Bureau of Driver Licensing :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE DAN PELLEGRINI, Judge
HONORABLE MARY HANNAH LEAVITT, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE PELLEGRINI

FILED: January 30, 2008

Malcolm B. Stokes (Licensee) appeals from an order of the Court of Common Pleas of Monroe County (trial court) dismissing his appeal of a one-year disqualification of his commercial driver's license (CDL) imposed by the Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing (Bureau). He contends that under Section 1611(a)(1) of the Uniform Commercial Driver's License Act (Act), 75 Pa. C.S. §1611(a)(1),¹ a person has to be

¹ Section 1611(a) of the Act provides:

(a) DISQUALIFICATION FOR FIRST VIOLATION OF CERTAIN OFFENSES.--Upon receipt of a report of conviction, the department shall, in addition to any other penalties imposed under this title, disqualify any person from driving a commercial motor vehicle or school vehicle for a period of one year for the first violation of:

(Footnote continued on next page...)

driving a commercial vehicle at the time of a driving under the influence (DUI) infraction in order to have his CDL disqualified.

In August 2006, Licensee, a resident of Pennsylvania who was licensed by the Commonwealth to operate both a motor vehicle and a commercial motor vehicle, was arrested in New Jersey while driving his personal vehicle and charged with violating New Jersey's DUI statute.² He pled guilty to that charge. After receiving notice of his guilty plea, the Bureau notified Licensee on December 11, 2006, that his driving privilege was suspended for a period of one year. *See* Section 3804(e)(2)(i) of the Vehicle Code (Code), 75 Pa. C.S. §3804(e)(2)(i). By separate notice also dated December 11, 2006, the Bureau notified Licensee that his commercial driving privilege was disqualified for a period of one year due to his DUI conviction. *See* Section 1611(h) of the Act, 75 Pa. C.S. §1611(h).³ Licensee filed a

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(1) section 3802 (relating to driving under the influence of alcohol or controlled substance) or former 3731, where the person was a commercial driver at the time the violation occurred;

² N.J.S.A. 39:4-50(a) defines a driving under the influence offender as:

A person who operates a motor vehicle while under the influence of intoxicating liquor ... or operates a motor vehicle with a blood alcohol concentration of .10 percent or more by weight of alcohol in the defendant's blood...

³ 75 Pa. C.S. §1611(h), provides, in pertinent part:

CONVICTION IN FEDERAL COURT OR ANOTHER STATE.--
For purposes of the provisions of this section, a copy of a report of conviction or a copy of a report of administrative adjudication from a Federal court or another state for an offense similar to those offenses

(Footnote continued on next page...)

timely appeal of the disqualification contending, among other things, that because he had not been operating a commercial vehicle at the time of his DUI offense, he was not a commercial driver at the time of the offense, and the Bureau could not disqualify his CDL under 75 Pa. C.S. §1611(a)(1).

Following a hearing, the trial court upheld the one-year disqualification of Licensee's CDL reasoning that Section 1611(a)(1) of the Act had been amended in 2005⁴ removing the requirement in the provision that in order to have a CDL disqualified, a licensee had to be driving or operating a commercial vehicle at the time of the violation. Instead, under the current version of Section 1611(a)(1), a licensee's CDL could be disqualified no matter the type of vehicle the licensee was driving. The trial court dismissed Licensee's statutory appeal of the CDL disqualification,⁵ and this appeal followed.⁶

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which would result in disqualification in this section shall be treated by the department as if the conviction had occurred in this Commonwealth.

⁴ Prior to the 2005 amendment, the provision read:

(1) Section 3802 (relating to driving under the influence of alcohol or controlled substance) or former Section 3731, where the violation occurred *while the person was operating a commercial vehicle or school vehicle*.

⁵ The trial court also dismissed Licensee's statutory appeal of the suspension of his operating privilege for one year. He has not appealed this ruling.

⁶ Our scope of review of the trial court's order is limited to determining whether the factual findings of the trial court are supported by competent evidence and whether the trial court committed an error of law or an abuse of discretion. *Kovalcin v. Department of Transportation, Bureau of Licensing*, 781 A.2d 273 (Pa. Cmwlth. 2001).

On appeal, Licensee argues that the phrase “where the person was a commercial driver at the time the violation occurred” found in Section 1611(a)(1) of the Act is ambiguous as to what type of conduct would lead to a disqualification of a licensee’s CDL. He contends that it could either mean that the person had to be driving a commercial motor vehicle or, as the trial court found, that the driver merely holds a CDL and drives any vehicle at the time a violation occurs. He acknowledges that the Legislature may have intended “commercial driver” as used in that section to have both meanings, but contends that if the Legislature had intended for him to face the same penalty, i.e., to disqualify his CDL for one year while driving a non-commercial vehicle, as if he were in a commercial vehicle, it should have clearly stated so in Section 1611(a)(1) as it did in other statutory provisions within this section, such as Section 1611(e) of the Act, 75 Pa. C.S. §1611(e).⁷ Licensee argues that punitive statutes should be strictly construed and maintains that because he was

⁷ Section 1611(e) of the Act provides:

(e) DISQUALIFICATION FOR CONTROLLED SUBSTANCE OFFENSES.--The department shall disqualify any person from driving a commercial motor vehicle for life who is convicted of using a motor vehicle in the commission of any felony involving the manufacture, distribution or dispensing of a controlled substance or possession with intent to manufacture, distribute or dispense a controlled substance where either:

(1) the person was a commercial driver’s license holder at the time of the commission of the felony; or

(2) the motor vehicle used in the commission of the felony was a commercial motor vehicle.

There shall be no exceptions or reductions to this disqualification for life.

not driving a commercial vehicle at the time of his DUI arrest, his CDL should not have been disqualified.

Recently, we rejected an identical argument made by a licensee in *Wagner v. Department of Transportation, Bureau of Licensing*, 931 A.2d 104 (Pa. Cmwlth. 2007). In that case, the licensee was arrested and charged with DUI in violation of Section 3802 of the Code, 75 Pa. C.S. §3802. At the time of his arrest, the licensee, who was holder of a CDL, was driving his personal vehicle. He accepted Accelerated Rehabilitative Disposition (ARD), and his operating privilege was suspended for 30 days. However, the Bureau also notified the licensee that his CDL would be disqualified for one year pursuant to Section 1611(a)(1) of the Act. He filed an appeal from the disqualification because he was not operating a commercial vehicle at the time of the violation. In sustaining his appeal, that trial court, adopting the argument Licensee advances here, found that Section 1611(a)(1) was ambiguous whether it applied to a holder of a CDL as well as to an operator of a commercial vehicle. It concluded that if the General Assembly wanted that section to apply to a CDL holder operating any vehicle, it would have used language in that section similar to that in Section 1611(e), which applied to a CDL holder using any motor vehicle at the time of a violation. The trial court ultimately granted the licensee's appeal.

On appeal, we reversed. We noted that “commercial driver” was defined in Section 102 of the Code, 75 Pa. C.S. §102, as one who drives a commercial vehicle or is a CDL holder as defined by Section 1603 of the Act. That section defines “CDL holder” as one who has been issued a CDL or a commercial driver learner’s permit, and it also defines “conviction” to include ARD. Based on these definitions, we

concluded that Section 1611(a)(1) mandated that a person be disqualified from operating a commercial motor vehicle if he is convicted of DUI, no matter the type of vehicle the licensee was driving at the time of his DUI. As further support for this conclusion, we compared, as did the trial court here, the pre-amendment Section 1611(a)(1) to its current form, and found that application of that section to CDL holders and operators of commercial vehicles was in consonance with other statutory provisions like Section 1611(e), stating:

In amending the statute in 2005, the General Assembly directed that all persons shall be disqualified from driving a commercial motor vehicle or a school vehicle if that person is convicted of a DUI offense and is a commercial driver, i.e., one who either drives a commercial vehicle or is a CDL holder, when the violation occurs.

Likewise, Section 1611(e) of the Act mandates disqualification from driving a commercial motor vehicle for controlled substance offenses that occur when the person is a CDL holder, or, when using a commercial motor vehicle during the commission of a felony... There is no conflict between Sections 1611(a)(1) and (e); further, there is no ambiguity in Section 1611(a)(1).

Id., 931 A.2d at 107.

In the instant matter, despite Licensee's request that we overrule *Wagner*, the Bureau properly disqualified Licensee's CDL for one year, notwithstanding that he was not driving a commercial vehicle at the time he was convicted for DUI. Because his conviction and his status as a CDL holder at the time of the offense is undisputed, Licensee is subject to the provisions of the Act, which

include the one-year disqualification of his commercial operating privilege, and the trial court did not err in dismissing his statutory appeal.⁸ *Wagner*.

Accordingly, the order of the trial court is affirmed.

DAN PELLEGRINI, JUDGE

⁸ Licensee has also argued that if “commercial driver” in Section 1611(a)(1) of the Act includes CDL holders, then every commercial driver could be disqualified from operating commercial vehicles for offenses committed in non-commercial vehicles which, in turn, could have detrimental effects on the common carrier industry in Pennsylvania because a commercial driver’s livelihood would be at stake when he operates a non-commercial vehicle. We reject this argument because the General Assembly’s purpose in passing the Act was to “reduce or prevent commercial motor vehicle accidents, fatalities and injuries.” 75 Pa. C.S. §1602. In order to achieve this objective, this Court has held that it is reasonable to subject commercial vehicles to stricter sanctions than those imposed on non-commercial vehicles. *Thorek v. Department of Transportation, Bureau of Driver Licensing*, __ A.2d __ (Pa. Cmwlth. 2007), 2007 Pa. Cmmw. LEXIS 648.

