

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF TRANSPORTATION

In the Matter of the Revocation of the
Insulin-Dependent Diabetic Driver Waiver
of Adam Whall

**RECOMMENDATION FOR
SUMMARY DISPOSITION**

This matter came on for hearing before Administrative Law Judge Manuel J. Cervantes (ALJ) on June 29, 2010 pursuant to a Notice of and Order for Hearing filed May 7, 2010.¹

Michael A. Sindt, Assistant Attorney General, appeared on behalf of the Office of Freight and Commercial Vehicle Operations, Department of Transportation (DOT). Adam Whall (Respondent) appeared on his own behalf.

It became apparent during the course of the hearing that there were no material facts in dispute and that the parties should proceed by summary disposition. The parties agreed to the following schedule: the DOT would file its written Motion and Memorandum in support of Summary Disposition by July 9, 2010. Respondent would file his response no later than July 23, 2010. The ALJ issued a Scheduling Order to this effect which was mailed to the parties on June 28, 2010.²

The DOT timely filed its Motion with the Office of Administrative Hearings on July 9, 2010. Respondent did not file a response. The record closed at the end of the filing period on July 23, 2010.

STATEMENT OF ISSUE

Did the DOT properly revoke Respondent's insulin-dependent diabetic driver waiver?

Based upon all of the files, records and proceedings herein, and for the reasons set forth in the accompanying Memorandum, the ALJ makes the following:

RECOMMENDATION

1. IT IS RESPECTFULLY RECOMMENDED that the Commissioner of Transportation (Commissioner) DENY the DOT's Motion for Summary Disposition; and

¹ Notice of and Order for Hearing and Prehearing Conference.

² Second Scheduling Order.

2. That the Commissioner REVERSE the DOT's revocation of Respondent's insulin-dependent diabetic driver waiver.

Dated: August 20, 2010

s/Manuel J. Cervantes

MANUEL J. CERVANTES
Administrative Law Judge

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Transportation will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Tom Sorel, Commissioner of Transportation, 395 John Ireland Boulevard, St. Paul, Minnesota 55155 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

I. Jurisdiction

The ALJ and the Commissioner of DOT have jurisdiction pursuant to Minn. Stat. §§ 14.50 and 221.0314, subd. 3a(f). The Respondent was given notice of the hearing in this matter and the DOT has complied with all relevant procedural requirements.

II. Contention of the Parties

The DOT contends that Respondent had an obligation to report any accident, including that of January 13, 2010, as well as moving violations, revocations/suspensions/cancellations of his driver's license to the DOT.³ Respondent failed to immediately report the incident of January 13, 2010 and failed to report that his license was canceled on February 16, 2010. Specifically, the DOT relies on Minn. Stat. § 221.0314, subd. 3a(d)(1) that requires a waiver holder to submit a description of any episode that involved the person's loss of consciousness or loss of ability to operate a motor vehicle safely and to immediately report the person's involvement in an accident for which a report is required under Minnesota law. The DOT contends that Respondent's waiver revocation was lawful because of Respondent's deficiencies. Respondent appeals the DOT's determination to revoke his insulin-dependent diabetic driver waiver.

III. Procedural Standard

Summary disposition is the administrative equivalent of summary judgment in district court practice. Summary disposition is appropriate where there is no genuine issue as to any material fact and one party is entitled to judgment as a matter of law when the law is applied to those undisputed facts.⁴ The Office of Administrative Hearings has generally followed summary judgment standards developed in judicial courts when considering motions for summary disposition in contested case matters.⁵ A genuine issue is considered one that is not frivolous or a sham, and a material fact is one whose resolution will affect the result or outcome of the case.⁶ A moving party has the initial responsibility of showing no material fact is in dispute. The evidence must be viewed in the light most favorable to the non-moving party.⁷ Any doubt as to the existence of a material fact must be resolved in a finding that a fact issue exists.⁸ Summary disposition should not be granted if reasonable minds could draw differing conclusions from the evidence presented.⁹ The ALJ is to make a recommendation about the appropriate interpretation of the law and about how that law applies to the undisputed facts.

IV. Facts

The parties agree there are no material facts in dispute as follows: Respondent is an insulin-dependent diabetic.¹⁰ On May 28, 2009, Respondent submitted an

³ Exs. 3 and 4.

⁴ *Sauter v. Sauter*, 70 N.W.2d 351, 353 (Minn. 1955); *Louwagie v. Witco Chemical Corp.*, 378 N.W.2d 63, 66 (Minn. Ct. App. 1985); Minn. R. 1400.5500, K; Minn. R. Civ. P. 56.03.

⁵ See Minn. R. 1400.6600 (2007).

⁶ *Illinois Farmers Insurance Co. v. Tapemark Co.*, 273 N.W.2d 630, 634 (Minn. 1978); *Highland Chateau, Inc. v. Minnesota Dept. of Public Welfare*, 356 N.W.2d 804, 808 (Minn. Ct. App. 1984).

⁷ *Sauter v. Sauter*, 70 N.W.2d 351, 484-485 (Minn. 1955).

⁸ *Admiral Merchants Motor Freights, Inc. v. O'Connor & Hanna*, 494 N.W.2d 261, 265 (Minn 1992).

⁹ *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn 1997).

¹⁰ Ex. 3.

application to the DOT for an insulin-dependent diabetic driver waiver (waiver).¹¹ Included in his application were a medical examiner's report and a certificate that indicated that Respondent required a waiver in order to be medically qualified to drive commercial motor vehicles. The examiner's report and certificate required an annual reevaluation by a medical professional.¹² On June 4, 2009, the DOT issued Respondent a Minnesota intrastate waiver effective until May 28, 2010, the expiration date of the medical examiner's certificate. The waiver card itself reads, "Any failure to comply with the conditions of the waiver will be cause for immediate revocation of this authorization." It also requires the bearer of the waiver to "report any accident, moving violations, or revocations/suspensions/cancellations of your driver's license to this office within 30 days of the incident."¹³

On January 13, 2010, Respondent was driving for his employer, Super Mom's Kitchens, LLC, when he was involved in a vehicle accident.¹⁴ The police were called and an accident report was written and filed. The accident report narrative states,

Driver ... was having a diabetic issue and was confused and lost. Driver turned right into a snow bank and up into the yard of 5510 Northwood Ridge. Driver ... thought he was turning into a driveway so he could turn around [Driver] got stuck in the snow filled yard and could not get out. Driver checked his blood sugar, which was low. Driver took glucose tablets and ate food to regulate blood sugar. Driver was ok and refused medical attention. No injury Driver's Manager was on scene and Unit 1 was removed from the yard.

The hand-drawn diagram on the accident report shows that the truck came to a stop between three bushes. The accident report makes no mention of property damage. The owner of the property where the truck came to rest was notified of the incident.¹⁵ The DOT did not submit any evidence of property damage into the record.

On January 19, 2010, Respondent's employer provided the DOT a copy of the accident report and acknowledged that Respondent would be required to obtain another "DOT physical" [in order to return to work].¹⁶ Respondent submitted an undated handwritten letter to Mr. Larry Johnson, Office of Freight and Commercial Vehicle Operations, explaining the January incident and providing his vehicle insurance information. Also in the letter, Respondent noted there were no personal injuries and no property damage to the company's vehicle.¹⁷ In a second handwritten note, dated January 26, 2010, Respondent attempted to schedule a meeting for the following day,

¹¹ *Id.*

¹² *Id.*, Minn. Stat. § 221.0314, subd. 3a(g).

¹³ *Id.*

¹⁴ Ex. 4.

¹⁵ *Id.*

¹⁶ *Id.*; email date January 19, 2010 from Corrie Perkins, Human Resources Supervisor, Super Mom, LLC.

¹⁷ *Id.*

January 27, 2010, with Mr. Johnson regarding the status of his waiver.¹⁸ The record is not clear whether that meeting took place.

On February 16, 2010, the Department of Public Safety (the DPS) canceled Respondent's driver license for not being physically qualified.¹⁹ Respondent did not notify the DOT of his driver's license cancelation. On April 2, 2010, the DOT revoked Respondent's waiver for failing to report the cancelation of his driver's license and failing to return the waiver to the DOT upon cancelation, relying on Minn. Stat. § 221.0314, subd. 3a(e). The revocation notice advised that Respondent would not be eligible for another waiver for three years from the date of license reinstatement.²⁰

On April 9, 2010, the DPS's medical committee made its recommendation to reinstate Respondent's driving privileges based on being physically qualified to drive. Respondent's driving license was reinstated on that date. Respondent's license was canceled for a period of fifty-two days. Respondent's waiver would have expired on May 28, 2010, but for the revocation. Respondent has not requested a waiver renewal. There is no evidence in the record that Respondent operated a commercial motor vehicle since January 13, 2010.

V. Analysis

A person who is an insulin-dependent diabetic may not be granted an intrastate commercial driver's license unless the person meets the criteria for a waiver. The standards for granting the waiver are set forth in Minn. Stat. § 221.0314.²¹ The DOT, Office of Freight and Commercial Vehicle Operations, determines whether the waiver should be granted and then notifies the DPS, which issues the appropriate license if other licensing requirements are met. In order to be eligible for the waiver, an insulin-dependent diabetic person must be examined by a licensed physician.²² A person seeking such a waiver is sent a "waiver application packet" that includes the forms that must be completed, and directs the applicant to be sure that all of the necessary information or reports are returned.²³ In addition, the commissioner must deny an application for a waiver, if, during the three years preceding the application, the applicant's driver's license has been suspended, canceled or revoked by application of certain provisions of law.²⁴

As the basis for the revocation of the waiver, the DOT contends that Respondent violated Minn. Stat. § 221.0314, subd. 3a(d) because he did not report an episode that involved loss of consciousness or loss of ability to operate a motor vehicle safely and because he failed to report the accident of January 13, 2010 immediately. Minn. Stat.

¹⁸ *Id.*

¹⁹ Ex. 7.

²⁰ Ex. 4. Minn. Stat. 221.0314, subd. 3a(e).

²¹ The standards for granting waivers for interstate commercial licenses are governed by federal law. See 49 C.F.R. § 391.41.

²² Minn. Stat. § 221.0314, subd. 3a(b)(9) and (10).

²³ Ex. 3.

²⁴ Minn. Stat. § 221.0314, subd. 3a(d).

§ 221.0314, subd. 3a(d), in relevant part, requires two things. First, the waiver holder must provide a description through his physician of any episode that involved the person's loss of consciousness at intervals specified by the waiver²⁵ and second, the waiver holder must immediately report his/her involvement in an accident *for which a report is required under section 169.09, subd. 7.*²⁶ (Emphasis mine.)

The DOT has not established the violation of either of these elements. As to the second element, under Minn. Stat. § 169.09, subd. 7, only accidents that involve bodily injury and/or property damage in excess of \$1000 are required to be reported to the DPS.²⁷ The record reflects there was no personal injury or property damage to the truck driven by Respondent. There is no evidence in the record that the homeowner where the truck came to rest sustained any property damage. The only evidence on the subject speaks in terms of the truck driving over a snow bank and landing in a snow filled yard. The truck was removed from the yard without damage. The DOT has not carried its burden of proof to establish that the accident of January 13, 2010 was a reportable accident as required by Minn. Stat. § 221.0314, subd. 3a(d)(2), and, therefore, the ALJ cannot find that this element of the statute was violated.

As to the first element, Minn. Stat. § 221.0314, subd. 3a(d)(1) requires that the waiver holder report to his physician at his annual physical, or other interval as required by the waiver, any episodes that involve the person's loss of consciousness or loss of ability to operate a motor vehicle safely and to obtain and provide the physician's report to the DOT. Under this statutory scheme, the waiver holder has an obligation to report accurately his health condition to his physician. The physician records the health history as required by his/her professional medical practice standards and determines whether the waiver holder is physically qualified to drive a commercial motor vehicle in light of the waiver holder's physical condition. The physician makes the medical report available to the waiver holder to provide the report to the Office of Freight and Commercial Vehicle Operations. If the physician does not believe the waiver holder is qualified to operate a motor vehicle in a safe manner, the physician may find the person unqualified to operate and upon notification to the DOT, the DOT may deny, suspend or cancel a waiver, depending on the circumstances of the situation. The DOT cites no other authority that requires the waiver holder, him/herself, to report these types of episodes directly to the DOT.

Even if such direct-type of episode reporting is required, and taking the facts in the light most favorable to the non-moving party, Respondent did explain the circumstances of the accident in his letter addressed to Mr. Johnson. In addition, knowledge of the accident on the part of the DOT can reasonably be inferred in

²⁵ Minn. Stat. § 221.0314, subd. 3a(d)(1). In this instance, the interval was annual, upon the expiration of the physician's certificate which indicated that Respondent required a waiver in order to be medically qualified to drive commercial vehicles. Minn. Stat. § 221.0314, subd. 3a(g).

²⁶ The ALJ notes that Minn. R. 8850.7600 requires an applicant, during a waiver renewal application, to report the number of accidents incurred by the driver while driving under the current waiver. See Minn. R. 8850.7600, subp. F.

²⁷ See also, Minn. Stat. § 221.0314, subd. 8 which incorporates by reference the definitions of "accident", "disabling damage", and "fatality" contained in the Code of Federal Regulations, 49 C.F.R. 390.50.

Respondent's attempt to schedule a meeting within two weeks of the accident with Mr. Johnson to discuss the status of his waiver. Given the legal and factual analysis, the ALJ cannot conclude that either of the requisite statutory elements in Minn. Stat. § 221.0314, subd. 3a(d) was violated by Respondent.

The DOT applied Minn. Stat. § 221.0314, subd. 3a(e), to revoke Respondent's waiver because his driving privileges were canceled as "not physically qualified" to operate a motor vehicle.

From a technical point of view, this statute does not apply to the circumstances at hand. It reads,

The Commissioner shall deny the application for a waiver if,

[D]uring the three years preceding the application:

(1) the applicant's driver's license has been suspended under [Minn. Stat.] section 171.18, paragraph (a), clauses (1) to (9), (11) and (12), canceled under section 171.14, or revoked under section 171.17, 171.172, or 171.174; or

(2) the applicant has been convicted of a disqualifying offense, as defined in Code of Federal Regulations, title 49, section 383.51, paragraph (b), which is incorporated by reference.

Procedurally, the present case arises on a revocation of a waiver, not upon the denial of an application renewal. However, assuming for the moment that Respondent had applied for a waiver renewal upon the expiration of the former waiver, the statute would still not serve to bar the renewal application because the status of "not physically qualified" is not among the enumerated offenses in Minn. Stat. § 221.0314, subd. 3a(e).

49 C.F.R. § 383.15 (b), distinguishes between disqualification for loss of driving privileges and disqualification for criminal and other offenses. Disqualification for loss of driving privileges is limited to the duration of the driver's loss of privilege to operate. The length of disqualification for criminal offenses is set forth in 49 C.F.R. § 383.51(b), which is incorporated by reference in Minn. Stat. § 221.0314, subd. 3a(e).

Because Respondent's driving conduct resulted in loss of driving privilege, 49 C.F.R. 391.15(b)(1) applies and limits the disqualification to the duration of the driver's loss of driving privilege.²⁸ It states,

A driver is disqualified for the duration of the driver's loss of his/her privilege to operate a commercial motor vehicle on public highways, either

²⁸ Commissioner's Order *In the Matter of the Application for Waiver of Commercial Driver Qualification of Casey J. Willis*. See also, *In the Matter of the Denial of an Insulin-Dependent Diabetic Driver Waiver to Brady W. Webster Pursuant to Minn. Stat. 221.0314*, OAH Docket No. 15-3001-21028-2.

temporarily or permanently, by reason of the revocation, suspension, withdrawal, or denial of an operator's license, permit, or privilege until the privilege is restored by the authority that revoked, suspended, withdrew or denied it.

In this case, Respondent satisfied the medical committee and the DPS that he was physically qualified to operate a motor vehicle and his driver's license was restored on April 9, 2010. His waiver should not have been revoked but rather his waiver should have been canceled for the fifty-two day period that his driving privileges were canceled.

Finally, Respondent failed to report the cancelation of his operating license to the DOT. The DOT relies, in part, on this rationale to support the waiver revocation. The DOT did not cite any authority for this obligation to report on the part of Respondent.

49 C.F.R. 391.15 (b)(2), which is incorporated by reference in Minn. Stat. § 221.0314, subd. 2, imposes an obligation upon a driver who receives a notice that his license to operate a commercial motor vehicle has been canceled to notify his employer of the contents of the notice, but there is no like obligation in law or rule which requires the Respondent to notify the DOT. In any event, as state above, there is no evidence in the record, nor has it been alleged, that Respondent drove a commercial motor vehicle during the period of the cancelation.

M. J. C.