

State of Indiana
Bureau of Motor Vehicles

In the Matter of [REDACTED])	Case No. 16-CD-005
DL # [REDACTED])	
Petitioner)	

FINAL ORDER

1. This matter comes before me as a result of a hearing request filed by Petitioner [REDACTED] ([REDACTED]) by letter on March 7, 2016, seeking administrative review of a decision by the Indiana Bureau of Motor Vehicles ("BMV") dated March 6, 2016, to disqualify his commercial driving privileges for one year based on his arrest for the offense of Operating While Intoxicated.

2. [REDACTED] was arrested and charged with violating 625 ILCS 5/11-501, driving while under the influence of alcohol, other drug or drugs, intoxicating compound or compounds or any combination thereof on July 11, 2013 in Jasper County, Illinois.

3. On November 20, 2014, [REDACTED] signed a Court Order on Supervision in which he stipulated as to the facts supporting the charge and/or a Court finding the Defendant guilty as charged for the offense. The Order included the Court's opinion that the Defendant and the public would be best served if the Defendant was not to receive a criminal record; and in the best interest of justice an Order of Supervision is more appropriate than a sentence otherwise permitted under the Criminal Code. (Respondent's Exhibit A)

4. On February 23, 2016, the BMV received a Report of Supervision from Jasper County Court, State of Illinois which reported [REDACTED] arrest on July 11, 2013 for "DUI any amount of drug." The Comments section of the Report of Supervision states:

"Court supervision is not a conviction and no judgment is entered against the driver. However, if CDL, CMV, HAZMAT is equal to YES, Illinois utilizes the supervision disposition to impose a disqualification of the CDL privileges for a driver holding an Illinois driver's license or Illinois commercial driver's license."

A line above the comments section on the supervision report reads, "CDL: N CMV: N HAZ MAT: N".

5. There is no evidence in the record that either confirms or denies whether the Jasper County Report of Supervision stated if the CDL, CMV, or Hazmat "is equal to yes."

6. On May 17, 2016 Jasper County Circuit Court entered [REDACTED] successful discharge from court-ordered supervision. (Respondent's Exhibit B)

7. This matter was referred to Administrative Law Judge (“ALJ”) Steven Sams, Esq., for review under Indiana Code § 4-21.5-3-7(a). A hearing was held June 14, 2016, at which [REDACTED] was represented by counsel, Isha Wright-Ryan. The BMV was represented by Kyle Bonick. Witnesses were sworn and evidence was presented. The ALJ issued his Recommended Order on July 28, 2016, which affirmed the BMV’s action disqualifying [REDACTED] CDL for one year.
8. On August 8, 2016, [REDACTED] by counsel, filed a Request for Reconsideration, effectively objecting to the ALJ’s Recommended Order.
9. A holder of a CLP or CDL is subject to disqualification...if the holder drives a CMV or non-CMV and is convicted of the violations listed in paragraphs (b) and (c). 49 CFR 383.51. Table 1 to § 383.51 contains a list of major offenses and the corresponding disqualification timeframe based on the type of vehicle the driver is operating *if a driver operates a motor vehicle and is convicted of...*(1) being under the influence of alcohol...1 year. 49 CFR 383.51(b) (emphasis added).
10. Indiana Code § 9-28-1-3 provides:

“the licensing authority in the home state, for purposes of suspension, revocation, or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported [...] as it would if such conduct had occurred in the home state, in the case of convictions for [...] (2) driving a motor vehicle while under the influence of an intoxicating liquor, or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle.”
10. 625 Ill. Comp. Stat. 5/6-204(d) (Illinois) provides:

“(d) [...] In accordance with 49 CFR Part 384, all reports of court supervision, except violations related to parking, shall be forwarded to the Secretary Of State for all holders of a CLP or CDL or any driver who commits an offense while driving a commercial motor vehicle. These reports shall be recorded to the driver’s record as a conviction for use in the disqualification of the driver’s commercial motor vehicle privileges and shall not be privileged information.”
11. 49 CFR 384.225(b) and (d) require states to post and maintain as part of the Commercial Drivers License Information System (CDLIS) “[a]ll convictions, disqualifications and other licensing actions of any State or local law relating to motor vehicle-traffic control...committed in any type of vehicle” for at least three years or longer.
12. 49 CFR 384. 226 provides that:

“the State must not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a CLP or CDL holder’s conviction for any violation, in any type of motor vehicle, of a State or local traffic control law [...] from appearing on the CDLIS driver record, whether the driver was convicted for an offense committed in the State where the driver is licensed or another State.”

13. 49 CFR 383 and 384 were adopted as Indiana law through Indiana Code § 9-24-6.1-2.

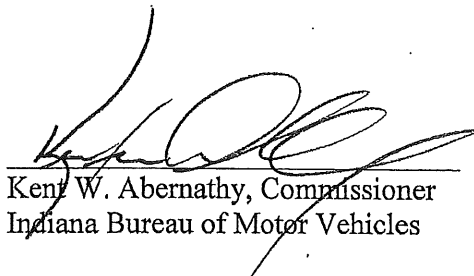
11. Indiana state law on the matter is unequivocal following the Indiana Supreme Court’s decision in a similar matter where the defendant, Hargrave, was arrested for operating while intoxicated and immediately surrendered his commercial driver’s license. *State, Indiana Bureau of Motor Vehicles v. Hargrave*, 52 N.E.3d 255 (Ind. Ct. App. 2016). Hargrave pleaded guilty to the offense and the trial court withheld judgment of conviction pursuant to Hargrave’s diversion agreement with the State of Indiana. *Id.* “The BMV has interpreted 49 C.F.R. § 384.226 to ‘mean that a person who holds a CDL license at the time he commits a traffic violation may not participate in a diversion program or have judgment deferred on that conviction.’” *Id.* The trial court’s decision to withhold judgment on Hargrave’s conviction for operating while intoxicated and allowing him to enter a diversion program is contrary to Indiana and federal law. *Id.* at 260.

12. Accordingly, I find sufficient findings of fact and conclusions of law in the record to substantiate the ALJ’s Recommended Order. [REDACTED] CDL disqualification until March 6, 2017, was appropriate. His driver record must reflect the BMV disqualification.

13. Therefore, I AFFIRM the ALJ’s Recommended Order.

SO ORDERED.

10/5/16
Date


Kent W. Abernathy, Commissioner
Indiana Bureau of Motor Vehicles

Written notice of this order shall be provided to:

[REDACTED], Respondent
Isha Wright-Ryan, Counsel for Respondent
Indiana Bureau of Motor Vehicles