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IN THE SUPREME COURT OF THE STATE OF IDAHO

BRUCE ALLEN EDWARDS,	)	
	)	
	)	SUPREME COURT DOCKET NO. 45896
	)	Kootenai County Case No. 2016-3251
	)	
Petitioner,	)	PETITIONER’S OPENING
	)	MEMORANDUM
-vs-	)	(CORRECTED)
	)	
STATE OF IDAHO DEPARTMENT OF	)	
TRANSPORTATION,	)	
	)	
	)	
Respondent.	)	
_____	)	

OPENING BRIEF OF APPELLANT BRUCE ALLEN EDWARDS

Appeal from the District Court of the First Judicial  
District of the State of Idaho, in and for the  
County of Kootenai

HONORABLE CYNTHIA K.C. MEYER  
District Judge

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I.

**STATEMENT OF THE CASE**

This case involves a dispute over the Idaho Transportation Department's (the Department's) lifetime disqualification of Bruce Edwards' (Edwards) Class "A" commercial driver's license. The full history of this matter is as follows:

II.

**FACTUAL AND PROCEDURAL BACKGROUND**

**A. Event No. 1 - Failure of Evidentiary Testing Dated April 25, 2012:**

1. On April 25, 2012, Mr. Edwards was arrested for driving under the influence. (R. Vol. I, pp. 52-53) (Tr.Vol.I, p. 5, l. 17-25, p. 6, 1-2).<sup>1</sup> Mr. Edwards was driving a non-commercial passenger car at the time, and ultimately, was not convicted of the alleged DUI offense. (.R. Vol. I, pp. 52; 88). (Tr.Vol.I, pp. 5-6).

2. At the time of the April 25, 2012 failure of evidentiary testing, Mr. Edwards held a class "A" commercial driver's license (with class "D" privileges). (R. Vol. I, pp. 59; 88) (Tr.Vol.I, p. 11, l. 8-16). Mr. Edwards has never held class "B" or "C" privileges, nor did he hold a commercial learner's permit. (Tr.Vol.I p.11, l. 11-16).

3. Subsequently, Mr. Edwards had an administrative license suspension hearing (on his class "D" privileges) on May 16, 2012 based upon a failure of evidentiary testing on April 25, 2012. (R.Vol I, pp.50-57) (Tr.Vol.I, p. 6, l. 16-12). The hearing examiner sustained the suspension of Mr. Edward's class "D" driving privileges, (by way of written decision dated May 31, 2012), which suspension commenced May 25, 2012 and ran through August 23, 2012. (R. Vol. I, p. 56) (Tr. Vol.1, p.6, l. 6-12).

4. On or about April 30, 2012, the Department sent Mr. Edwards a Notice of Disqualification notifying him that his privileges to operate a commercial motor vehicle were withdrawn for one (1) year, for the stated reasons of failure or refusal of evidentiary testing and/or conviction for DUI. (It is clear from the evidence however, that the reason had to have been based upon the failure of evidentiary testing, as there was no conviction for DUI and no refusal involved). The withdrawal of CDL privileges was to be effective May 25, 2012 through May 25, 2013. (R.Vol.I, p.1; 58).

5. On or about April 30, 2012, the Department also sent Mr. Edwards a letter notifying him that his privileges to operate a commercial motor vehicle were withdrawn for one (1) year, for the failure or refusal of evidentiary testing and/or conviction for DUI. (Again, the basis for the Department's action was necessarily the failure of evidentiary testing). The withdrawal of CDL privileges was to be effective May 25, 2012 through May 25, 2013. (R.Vol. I, p. 1; 88) (Tr.Vol.I, p. 6, 1.13-21).

6. On or about May 24, 2012, a hearing before the Department was held concerning Mr. Edwards' commercial driving privileges. (R.Vol.I, pp.59-63) ( Tr.Vol.1, p.6,1.22-25, p.7, 1.1-2). By way of written decision dated June 6, 2012, Mr. Edwards' disqualification from operating a commercial motor vehicle for one (1) year was upheld, based (again, necessarily) upon the previously identified failure of evidentiary testing dated April 25, 2012. (R.Vol.I, pp.59-63; Tr.Vol.I, p. 7, 1. 3-5).

7. No appeal to the Court was undertaken by Mr. Edwards of the

suspension of his class “D” privileges or his disqualification from CDL privileges. This is supported by the fact there are no references to Petition’s for Judicial Review having been filed in the Department’s driving records for Mr. Edwards, (R. Vol. I, pp. 10-21); and the fact Mr. Edwards confirmed in his testimony that after the initial one (1) year CDL disqualification following the April 25, 2012 event, he did not have commercial driving privileges until February 23rd of 2015. (Tr.Vol.I, p. 16, l.20-25). This is the date of the Court’s entry of an Order staying the lifetime disqualification of Edwards’ commercial driving privileges, as noted in Paragraph 20 hereinafter set forth.

**Event No. 2 – DUI Conviction dated February 27, 2013:**

8. On or about January 27, 2013, (during the period of time in which Mr. Edwards’ CDL privileges were disqualified), Mr. Edwards suffered an arrest for DUI. (R.Vol. I, pp. 69-70; 110 para. VIII) (Tr. Vol.I, p. 7, l. 17-19). At the time, Mr. Edwards as driving in a non-commercial vehicle. (R. Vol. I, pp. 88; 110 para. VIII) (Tr. Vol. I, pp. 8, l.5-8).

9. The record reflects that Mr. Edwards’ arrest on January 27, 2013, ultimately led to a DUI conviction on February 27, 2013. (R.Vol.I, p. 110, para. VIII).

10. On or about February 19, 2013, the Department sent Mr. Edwards a Notice of Administrative License Suspension withdrawing his non-commercial driving privileges for one (1) year, effective March 25, 2013, based on the failure of evidentiary testing due to the arrest on January 27, 2013. (R.Vol.I, p.64) ( Tr. Vol.I, p.7, l. 10-19).

11. On March 25, 2013, an administrative license suspension hearing was held concerning Mr. Edwards' class "D" driving privileges. On March 27, 2013, by way of written decision, the hearing examiner sustained the ALS suspension for a one (1) year period, commencing March 25, 2013 through March 25, 2014. (R.Vol.1, pp.66-76) ( Tr.Vol.1, pp. 7-8, l. 20-25; l. 1-4). The decision was based upon two failures of evidentiary testing, the first on April 25, 2012, and the second on January 27, 2013. (.R. Vol. I, pp. 74; 78-87).

12. On or about April 10, 2013, Mr. Edwards filed a Motion to Reconsider the Department's March 27, 2013, written decision. (R. pp. 18; 78). On May 1, 2013, the hearing examiner denied the Motion to Reconsider (by taking no action upon it). (R. Vol I, pp. 18; 78).

13. On May 24, 2013, Mr. Edwards filed a Petition for Judicial Review with the District Court (Kootenai County Case No. CV-13-3935, Hon. Benjamin Simpson presiding), concerning his class "D" ALS suspension. (R.Vol. I, pp. 78; 111 para. XII) (Tr. Vol.I, p. 8, l.9-17).

14. On or about November 25, 2013, the Court in Kootenai County Case No. CV-13-3935 entered an Order for Leave to Present Additional Evidence on Remand (to the ITD Hearing Examiner). (R. Vol.I, pp.78; 111 para. XII). The reason for the need for additional testimony was the issuance of the decision in *Missouri v. McNeely*, 133 S.Ct. 1552, \_\_\_ U.S. \_\_\_ (2013), concerning forced blood draws, which was issued on April 27, 2013, shortly after the written March 27, 2013 decision of the hearing examiner upholding Mr. Edwards' class "D" suspension. As Mr. Edwards' case involved the issue of a forced blood draw, and

because the decision in the *McNeely* case came after the hearing examiner's decision, testimony was not taken on this specific issue at the original March 25, 2013 hearing. (Tr.Vol., p. 15 l. 1-23).

15. On January 22, 2014, a new hearing was held after the remand to the Department, and the previous ALS class "D" suspension was sustained by way of written decision dated February 24, 2014. (R. Vol.I, pp.78-87).

16. On March 24, 2015, the Court entered an Order in Case No. CV-13-3935 (Class "D") dismissing the case and vacating the suspension of Edwards' driver's license. (R.Vol.1, pp. 94-95).

17. On or about February 19, 2013, the Department sent Mr. Edwards a Notice of Lifetime Disqualification, disqualifying his commercial driving privileges for life, effective March 25, 2013, based upon two (2) claimed failures of evidentiary testing identified hereinabove. (R.Vol. I, p. 65).

18. On December 3, 2014, a hearing was held on the lifetime disqualification of Mr. Edwards' commercial driving privileges. By way of written decision dated December 12, 2014, the hearing examiner upheld Mr. Edwards' lifetime CDL disqualification. (R.Vol.I, pp.88-91). The disqualification was based upon a failure of evidentiary testing occurring on April 25, 2012 and January 27, 2013.

19. On January 8, 2015, Mr. Edwards filed a Petition for Judicial Review with the District Court (Kootenai County Case No. CV-15-344, Hon. Rich Christensen presiding), concerning the lifetime suspension of his CDL privileges. (R.Vol. I, p. 112, para. XVIII) (Tr. Vol.I, p. 10, l. 7-15 ).



20. On February 23, 2015, the Court in Kootenai County Case No. CV-15-344) entered an Order staying the lifetime disqualification of Edwards' commercial driving privileges until such time as the Court had entered a final decision on the Petition for Judicial Review in the case. (R.Vol. I, pp.92-93). Again, the first instance, following the April 25, 2012 failure of evidentiary testing, and resultant one (1) year CDL disqualification, in which Mr. Edwards had commercial driving privileges, was February 23, 2015, the date of the Court's Order. (Tr.Vol. pp. 15-16, l. 24-25, 1-25).

21. On March 24, 2015, the Court entered an Order in Case No. CV-15-344 (CDL) dismissing the case and vacating the disqualification of Edwards' commercial driver's license. (R.Vol.I, pp.96-97).

**Event No. 3 – DUI Conviction dated December 5, 2013:**

22. On or about June 7, 2013, Mr. Edwards was arrested for DUI, resulting in a DUI conviction dated December 5, 2013. (R.Vol. I, pp. 6; 19; 111 para. XVI).

23. The Department also alleges that Mr. Edwards ultimately suffered a refusal conviction (dated July 2, 2013), claiming it arose as a result of the June 17, 2013 arrest/ December 5, 2013 conviction. (R. Vol I, pp. 18; 28-29; 82) (Tr.Vol.I, pp. 11-12, l. 20-25, 1-2).

24. The Case History for Bonner County Case No. CV-13-1060, taken directly from the official Idaho Court Repository website, conclusively shows that the refusal case against Mr. Edwards was ultimately vacated and dismissed by the Court on December 5, 2013. (R. Vol. I, pp. 100–101).

25. On or about July 30, 2015, the Department sent a letter concerning Mr.

Edwards' CDL privileges, stating that the State of Idaho was imposing a mandatory lifetime CDL disqualification, based upon (1) the Administrative License Suspension (failure of evidentiary testing), dated April 25, 2012, and, one of three alleged additional "major offenses", including the DUI conviction dated February 27, 2013, a refusal conviction dated July 2, 2013 and the DUI conviction dated December 5, 2013 (R.Vol.I, pp.4-6, 99)

26. On or about July 30, 2015, the Department issued a Notices of Lifetime Disqualification (of CDL privileges) based upon (1) the Administrative License Suspension (presumptively the one commencing May 25, 2012), and, the DUI conviction (dated February 27, 2013), effective August 17, 2015. (R. Vol. I, pp. 3; 98; 112 para. XXI).

27. On September 8, 2015, a hearing before the Department was held on the lifetime disqualification of Mr. Edwards' CDL driving privileges. By way of written decision dated September 10, 2015, the hearing examiner sustained Mr. Edwards' lifetime CDL disqualification, on the basis of failure of evidentiary testing on April 25, 2012, the DUI conviction of February 27, 2013, an alleged refusal conviction on June 7, 2013, and the DUI conviction of December 5, 2013. (R. pp. 37-38;). In each of the arrests and convictions hereinabove described, Mr. Edwards was driving a non-commercial motor vehicle. (R.Vol.I, pp. 102-105; 127-130) (Tr.Vol.I, p. 11, l.4-7). Further, in each of the arrests and convictions hereinabove described, Mr. Edwards had no class "A" commercial driving privileges. (Tr.Vol.I, p. 11, l. 8-11).

28. On September 22, 2015, Mr. Edwards filed a Petition for Judicial

Review with the District Court (Kootenai County Case No. CV-15-6651, Hon. Cynthia K.C. Meyer presiding) concerning the lifetime suspension of his CDL privileges. (R.Vol.I, pp.132-140).

29. On October 2, 2015, the Court in Kootenai County Case No. CV-15-6651) entered an Order staying the lifetime disqualification of Edwards' commercial driving privileges until such time as the Court had entered a final decision on the Petition for Judicial Review in the case. (R.Vol.I, pp. 116-117).

30. On or about February 4, 2016, the Court in Kootenai Case No. CV-15-6651 entered an Order remanding the case (to the ITD Hearing Examiner). Said remand was necessary due to the Department's inability to produce the recorded testimony from the September 8, 2015 hearing. (R.Vol.I, pp. 118-120) (Tr.Vol.I, p. 3, 113-25).

31. On March 21, 2016, another hearing before the Department was held on the lifetime disqualification of Mr. Edwards' CDL driving privileges. By way of written decision dated March 28, 2016, the hearing examiner upheld Mr. Edwards' lifetime CDL disqualification. (R. Vol. I, pp. 127-131).

32. On April 25, 2016, Mr. Edwards filed a Petition for Judicial Review with the District Court (Kootenai County Case No. CV-16-3251, (Hon. Cynthia K.C. Meyer presiding) concerning the lifetime suspension of his CDL privileges. (R Vol. I, pp. 132-140). The new Petition reflected the written decision of the hearing examiner dated March 28, 2016 following remand, upholding Mr. Edwards' lifetime CDL disqualification. (R. Vol. I p. 135).

33. With respect to Mr. Edwards' convictions for DUI on February 27, 2013 and December 5, 2013, Mr. Edwards did not have commercial privileges for

driving in either instance. ( Tr.Vol.I, pp. 9; 11,1.19-25) (the word “arrested” on page 9 referring to the February 27, 2013 incident, was used erroneously in place of the word “conviction”)).

### **III.**

#### **ISSUES ON APPEAL**

(1). Are the State of Idaho Hearing Officer’s Findings of Fact, Conclusions of Law and Preliminary Order on Rehearing issued by the State of Idaho Department of Transportation in File No. 450A06320662 on March 28, 2016, clearly erroneous, in violation of applicable Idaho law?

(2). Did the State of Idaho Hearing Officer act erroneously in finding/concluding that Petitioner held a class “A” driver’s license when he committed other offenses which allegedly triggered a lifetime CDL disqualification?

### **IV.**

#### **STANDARD OF REVIEW ON APPEAL**

The Idaho Administrative Procedures Act (IDAPA) governs the review of ITD decisions to deny, cancel, suspend, disqualify, revoke, or restrict a person's driver's license. See I.C. §§ 49-201, 49-330, 67-5201(2), 67-5270. In an appeal from the decision of the district court acting in its appellate capacity under the IDAPA, this Court reviews the agency record independently of the district court's decision. *Marshall v. Idaho Dep't of Transp.*, 137 Idaho 337, 340, 48 P.3d 666, 669 (Ct. App. 2002). This Court does not substitute its judgment for that of the agency as to the weight of the evidence presented. I.C. § 67-5279(1); *Marshall*, 137 Idaho at 340, 48 P.3d at 669. This Court instead defers to the agency's findings of fact unless they are clearly erroneous. *Castaneda v. Brighton Corp.*, 130 Idaho 923, 926, 950 P.2d 1262, 1265 (1998); *Marshall*, 137 Idaho at 340, 48 P.3d at 669. In other words, the agency's factual determinations are binding upon the reviewing court, even where there is conflicting evidence before the agency, so long as the determinations are supported by substantial and competent evidence in the record. *Urrutia v. Blaine Cnty.*,

ex rel. Bd. of Comm'rs, 134 Idaho 353, 357, 2 P.3d 738, 742 (2000); Marshall, 137 Idaho at 340, 48 P.3d at 669.

The Court may overturn an agency's decision where its findings, inferences, conclusions, or decisions violate statutory or constitutional provisions; exceed the agency's statutory authority; are made upon unlawful procedure; are not supported by substantial evidence in the record; or are arbitrary, capricious, or an abuse of discretion. I.C. § 67-5279(3). The party challenging the agency decision must demonstrate that the agency erred in a manner specified in I.C. § 67-5279(3) and that a substantial right of that party has been prejudiced. Price v. Payette Cnty. Bd. of Cnty. Comm'rs, 131 Idaho 426, 429, 958 P.2d 583, 586 (1998); Marshall, 137 Idaho at 340, 48 P.3d at 669. If the agency's decision is not affirmed on appeal, it shall be set aside and remanded for further proceedings as necessary. I.C. § 67-5279(3).

IN RE: the Driver's License Suspension of: *Jesse Leroy Herrmann v. State of Idaho, Idaho Transportation Department*, Docket No. 44379, Decided: September 19, 2017

## V.

### ANALYSIS

**A. AT THE TIME OF THE DRIVING UNDER THE INFLUENCE CHARGES UTILIZED FOR PURPOSE OF THE LIFETIME DISQUALIFICATION, EDWARDS DID NOT HOLD A CLASS A, B OR C DRIVER'S LICENSE; THUS, THE CONVICTION CANNOT BE USED AS A BASIS FOR A LIFETIME DISQUALIFICATION FROM OPERATING A COMMERCIAL MOTOR VEHICLE.**

The Department has given Edwards a lifetime disqualification from operating a commercial motor vehicle on the basis of two alleged major offenses, an administrative license suspension, and two D.U.I. convictions. However, at the time of the D.U.I. convictions, Edwards did not hold a class A, B or C driver's

license. Accordingly, the D.U.I. convictions cannot form the basis for a lifetime disqualification from operating a commercial motor vehicle.

On April 25, 2012 Mr. Edwards failed evidentiary testing, At the time, Mr. Edwards held a class “A” commercial driver’s license (with class “D” privileges). On or about April 30, 2012, the Department sent Mr. Edwards a letter notifying him that his privileges to operate a commercial motor vehicle were withdrawn for one (1) year, for the failure or refusal of evidentiary testing and/or conviction for DUI. The withdrawal of CDL privileges was to be effective May 25, 2012 through May 25, 2013. On or about May 24, 2012, a hearing before the Department was held concerning Mr. Edwards’ commercial driving privileges. By way of written decision dated June 6, 2012, Mr. Edwards’ disqualification from operating a commercial motor vehicle for one (1) year was upheld, based upon the previously identified failure of evidentiary testing dated April 25, 2012. Mr. Edwards suffered a DUI conviction on February 27, 2013 in a non-commercial motor vehicle, during the period of his CDL disqualification. On or about February 19, 2013, the Department sent Mr. Edwards a Notice of Lifetime Disqualification, disqualifying his commercial driving privileges for life, effective March 25, 2013, based upon two (2) claimed failures of evidentiary testing identified hereinabove. On December 3, 2014, a hearing was held on the lifetime disqualification of Mr. Edwards’ commercial driving privileges. By way of written decision dated December 12, 2014, the hearing examiner upheld Mr. Edwards’ lifetime CDL disqualification. The disqualification was based upon a failure of evidentiary testing occurring on April 25, 2012 and January 27, 2013,

(relating to the February 27, 2013 DUI conviction).

On or about June 7, 2013, Mr. Edwards was arrested for second DUI in a non-commercial motor vehicle, resulting in a DUI conviction dated December 5, 2013. 25. On or about July 30, 2015, the Department sent a letter concerning Mr. Edwards' CDL privileges, stating that the State of Idaho was imposing a mandatory lifetime CDL disqualification, based upon (1) the Administrative License Suspension (failure of evidentiary testing), dated April 25, 2012, and, one of three alleged additional "major offenses", including the DUI conviction dated February 27, 2013, a refusal conviction dated July 2, 2013 (addressed later) and the DUI conviction dated December 5, 2013 (R.Vol. I, pp. 4; 99) On or about July 30, 2015, the Department issued a Notices of Lifetime Disqualification (of CDL privileges) effective August 17, 2015. On March 21, 2016, a hearing before the Department was held on the lifetime disqualification of Mr. Edwards' CDL driving privileges. By way of written decision dated March 28, 2016, the hearing examiner upheld Mr. Edwards' lifetime CDL disqualification. During the time of Mr. Edwards conviction, his CDL was disqualified.

The Hearing Officer made a conclusion of law in Paragraph. IV. That:

Idaho Code Section 49-105(7) provides that "disqualification" as defined in 49 CFR part 383, means the withdrawal by the Department of commercial vehicle driving privileges. Disqualification does not constitute a cancellation or revocation of the underlying Class A driver's license. The periods of disqualification of Respondent's commercial vehicle driving privileges under Idaho Code Section 49-335 did not result in the cancellation or revocation of the Class A driver's license held by the Respondent. Accordingly, Respondent did "hold" a Class A driver's license at the time of each of the matters set forth in paragraphs II., III., and IV., took place and is subject to lifetime disqualification under Idaho Code 49-335.

This misconstrues the law. Idaho Code § 49-335 governs disqualifications for commercial driver's licenses.

The code provides for a one (1) year period of disqualification in the event the holder of a class A, B or C driver's license commits certain enumerated offenses.

So, for example, I.C. § 49-335(2) provides:

(2) Any person who operates a commercial motor vehicle or who holds a class A, B or C driver's license is disqualified from operating a commercial motor vehicle for a period of not less than one (1) year if the person refuses to submit to or submits to and fails a test to determine the driver's alcohol, drug or other intoxicating substances concentration while operating a motor vehicle.

The code provides for a lifetime disqualification of commercial driving privileges if two or more enumerated offenses are committed. In this regard, I.C. § 49-335(4) states:

(4) A person is disqualified for the period of time specified in 49 CFR part 383 if found to have committed two (2) or more of any of the offenses specified in subsection (1) or (2) of this section, or any combination of those offenses, arising from two (2) or more separate incidents.

As pertains here, the above language is referencing a failure of evidentiary testing and a D.U.I. conviction.

49 CFR part 383.51(a)(3), in turn provides:

(3) A holder of a CLP or CDL is subject to disqualification sanctions designated in paragraphs (b) and (c) of this section, if the holder drives a CMV or non-CMV and is convicted of the violations listed in those paragraphs.

Under 49 CFR part 383.51 the legislature has provided for a lifetime disqualification for two or more convictions for driving under the influence.



To qualify for a lifetime disqualification, the offender must be a “holder of a CDL”, a commercial driver’s license. A “driver’s license” is defined under I.C.

§ 49-105(16) as:

(16) "Driver's license" means a license or permit issued by the department or by any other jurisdiction to an individual *which authorizes the individual to operate a motor vehicle or commercial motor vehicle on the highways* in accordance with the requirements of title 49, Idaho Code.

(emphasis added). A commercial driver’s license is defined more specifically.

Under I.C. § 49-104(8), the definition is stated as such:

(8) "Commercial driver's license" means any class A, class B or class C driver's license as defined in section 49-105, Idaho Code.

The various classes of driver’s licenses is broken down in I.C. § 49-105(17):

(17) "Driver's license -- Classes of" are issued for the operation of a vehicle based on the size of the vehicle or the type of load and mean:

- (a) Class A. This license shall be issued and valid for the operation of any combination of motor vehicles with a manufacturer's gross combination weight rating (GCWR) in excess of twenty-six thousand (26,000) pounds, provided the manufacturer's gross vehicle weight rating (GVWR) of the vehicle(s) being towed is in excess of ten thousand (10,000) pounds. Persons holding a valid class A license may also operate vehicles requiring a class B, C or D license.

The term “disqualification” has an ascribed meaning. I.C. § 49-105(7) provides, “"Disqualification" as defined in 49 CFR part 383, means withdrawal by the department of commercial vehicle driving privileges.” The undisputed evidence in this case demonstrates that Edwards was not operating a commercial motor vehicle on either the occasions wherein he was convicted of D.U.I. Likewise, it is also undisputed that Edwards was not the holder of a “CLP” during

the incidents in question. Thus, the only question to be answered is simply whether Edwards was the holder of a ““commercial drivers license” at all at the time of the D.U.I. convictions. Again, under I.C. § 49-105(16):

(16) "Driver's license" means a license or permit issued by the department or by any other jurisdiction to an individual *which authorizes the individual to operate a motor vehicle or commercial motor vehicle on the highways* in accordance with the requirements of title 49, Idaho Code.

Edwards clearly had no authority from the department or by any other jurisdiction *to operate a commercial motor vehicle on the highways* when he obtained his D.U.I.s. He had been specifically disqualified by the department on both occasions. At that point in time, he was no different from any other non-commercial driver; he can and was subjected to penalties for driving under the influence. He cannot lose his livelihood because of the fact he used to hold a CDL.

Furthermore, as our Court of Appeals has pronounced, “[I]f the individual’s driving *privileges* are revoked, *disqualified*, or suspended, *the individual’s license is inherently invalid.*” *State v. Matalamaki*, 139 Idaho 341, 79 P.3d. 162 (App. 2003) (emphasis added). Clearly, when Edwards was disqualified, his class “A” license was inherently invalid, and he did not fall within the parameters of I.C. § 49-105(17), which requires a license to be valid to qualify as a class A license.

While this is an appeal from the Hearing Examiner’s Findings and Conclusions, it is instructive to look at the District Court’s opinion. In concluding that Edwards held a class A license at the time of his second Offense (DUI – February 27, 2013), the District Court recited the following as support:

Unlike revocation, cancellation, or suspension, a disqualification only withdraws the privilege to drive, not the license. Revocations affect the person's license or privilege; cancellations affect the person's license; suspensions affect the person's license or privilege – a disqualification only affects the privilege, not the license. Additionally, suspensions cause a “withdrawal” of a license or privilege; cancellations “terminate” or “annul” a license; and revocations “terminate” a license or privilege. Unlike the additional step required for drivers with a cancelled license (applying for a new license), or the additional step required for drivers with a revoked license (application for renewal or restoration), disqualifications require no additional steps to restore driving privileges-other than the expiration of the disqualifying period-similar to suspensions.

This conclusion ignores the plain language of Idaho Code § 49-328.

The relevant portions of Idaho Code § 49-328 are as follows:

(1) When the period of revocation, disqualification or suspension of a driver's license has expired, or the reason for the revocation, disqualification or suspension no longer exists, the department shall reinstate the driver's license or driving privileges on application of the driver.

(2) The application shall be in the form prescribed by the department and accompanied by a reinstatement fee of fifteen dollars (\$15.00) which shall be deposited in the state highway account.

(4) In addition to any other fees required in this section to be collected, the department shall collect fifty dollars (\$50.00) for reinstating a driver's license after conviction for driving under the influence, without privileges, and after conviction or other violation of any other traffic related misdemeanor or infraction, of which fees forty dollars (\$40.00) shall be paid over to the county treasurer of the county in which the conviction occurred for support of that county's justice fund, or the current expense fund if no county justice fund has been established and the ten dollars (\$10.00) shall be deposited in the state highway account.

(5) In addition to any other fees required in this section to be collected, the department shall collect one hundred fifteen dollars (\$115) for reinstating a driver's license after a suspension imposed under the provisions of section 18-8002 or section 18-8002A, Idaho Code, or after a suspension arising out of any alcohol or drug related offense, other than a suspension imposed upon a person under eighteen (18) years of age pursuant to section 18-1502(d), Idaho Code. Funds collected pursuant to

this subsection shall be deposited in the state highway account. The department shall reevaluate the amount of the reinstatement fee herein imposed not later than February, 2000, to determine the sufficiency of the fee to meet the costs associated with the implementation of section 18-8002A, Idaho Code.

Certainly then, it cannot be said that disqualifications require no additional steps to restore driving privileges -other than the expiration of the disqualifying period - similar to suspensions. For disqualifications, an application under Idaho Code § 49-328 must be submitted to the Department, and the applicable fees paid. There is no evidence that Edwards took these steps to reinstate his privileges prior to the DUI's in question.

Further, it is helpful to examine the authority of the Department following a hearing on the disqualification. Under I.C. § 49-326, governing the authority of the Department to suspend, *disqualify* or revoke *driver's license and privileges*, the statute provides in part:

Upon the hearing, the department shall either rescind its order or, with good cause, may affirm or extend the suspension or disqualification of the driver's license or revoke the driver's license.

Finally, pursuant to I.C. § 49-301(5), "No person shall be permitted to have more than one (1) driver's license issued for use within the United States at any time." A violation of such constitutes a misdemeanor. I.C. § 49-301(8). Accordingly, when Edwards' class "A" privileges were invalidated by way of disqualification, his license was necessarily downgraded to a class "D" license only.

**B. THE REFUSAL CHARGE CANNOT BE UTILIZED AGAINST EDWARDS FOR PURPOSES OF A LIFETIME DISQUALIFICATION, AS IT WAS VACATED AND DISMISSED AND THUS, DOES NOT QUALIFY AS A "CONVICTION".**

The Department wishes to utilize a “refusal conviction” as a basis for imposing Edwards’ lifetime CDL disqualification. Yet, that glosses over the fact that the “refusal conviction” was vacated and dismissed by the Court. However, pursuant to Idaho Code § 49-104(15)(b), a “conviction” in relevant part, is defined as an unvacated adjudication of guilt, or determination that a person has violated or failed to comply with the law. The Department cannot offer a cogent explanation as to why a vacated refusal conviction can serve as a basis for disqualification.

VI.

**CONCLUSION**

For the foregoing reasons, Mr. Edwards respectfully requests that the decision of the Hearing Examiner be overturned and Mr. Edwards’ lifetime commercial driver’s license disqualification be vacated.

DATED this 18th day of January, 2019.

/s/ Greg D. Horne  
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