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Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

BRUCE ALLEN EDWARDS, Petitioner, -vs- STATE OF IDAHO DEPARTMENT OF TRANSPORTATION, Respondent.	SUPREME COURT DOCKET NO. 45896 Kootenai County Case No. 2016-3251 PETITIONER'S REPLY MEMORANDUM

REPLY MEMORANDUM 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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(1). Were the substantial rights of Edwards prejudiced by the Hearing Officer's actions?

(2). Is Edwards entitled to an award of costs and attorney's fees?

II.

ARGUMENT

The various assertions made in the Department's Response Brief will be addressed in the order they appear in such Brief.

First, the Department asserts that Edwards' argues that the disqualification was improper because he was not operating a commercial vehicle at the time of the offenses. (Respondent's Brief, p. 7). This is not Mr. Edwards' argument at all. The significance of the fact that Mr. Edwards did not commit any of the offenses at issue while operating a commercial vehicle is twofold. A person who is operating a commercial vehicle under the influence versus operating a commercial vehicle while not under the influence has legal significance. It changes the characterization of the offender's actions, which potentially affects the penalties an offender is subject to. Also, this distinction affects the manner in which the offender's actions are perceived, relative to the principal rationale of Idaho's statutory scheme, namely, to keep intoxicated driver's from operating large trucks on the roadway, creating an increased risk to the public. In short, any emphasis placed on the

fact that Mr. Edwards was not operating a commercial vehicle while under the influence is critical to addressing these two points.

Second, the Department admits in its Briefing that "CDL drivers will lose their CDL for conviction of a DUI and/or a motorist's refusal to submit to evidentiary testing or failing such testing." (Respondent's Brief, p. 8). This serves to buttress Mr. Edwards' argument. Mr. Edwards maintains that his disqualifications caused the loss of his CDL, not simply the privileges associated therewith. The Department's statement, cited above, certainly seems to support what Mr. Edwards has long asserted.

Third, the Department relies upon two case citations, neither of which has any application to the present case – *Peck v. State, Department of Transportation*, 156 Idaho 112, 320 P.3d 1271 (Ct. App. 2014) and *Williams v. ITD*, 153 Idaho 380, 283 P.3d 127 (Ct. App. 2012). In *Peck*, the claims asserted by Peck were that (1) his procedural due process rights were violated because he was not given notice of the disqualification provisions of I.C. § 49-335; therefore, his evidentiary testing was performed without implied consent, violating his constitutional right to be free from unreasonable search and seizure; and (2) the disqualification of his CDL violated his substantive due process rights because the disqualification bore no rational relationship to a legislative purpose that was not already accomplished through the ALS suspension. In *Williams* on the other hand, Williams asserted that, (1) despite being civil in nature, the lifetime disqualification of his CDL was so punitive as to effectively be a criminal penalty and thus subjecting him to multiple punishments and convictions in violation of the Double Jeopardy Clause; (2), that I.C. § 18-8002 is unconstitutional as applied to him under the void-for-vagueness doctrine because the statute failed to inform him that a failed breath test would affect his

CDL; (3) that the ITD violated his substantive due process rights as his lifetime disqualification bore no rational relationship to the legislative objective of I.C. § 49-335; and (4) that his lifetime CDL disqualification was/is so punitive that it is the equivalent to either an excessive fine or cruel and unusual punishment, or both.

None of these claims have been asserted by Mr. Edwards in the case at bar. Furthermore, none of these cases ever attempted to answer the question of when a person ceases to be considered the "holder" of a CDL, as that issue was never raised in the two cases cited above. The two cases therefore, are valueless in terms of providing assistance to deciding the issues raised in the present case.

Fourth, the Department asserts that it takes positive action by the CDL holder to shift from a CDL driver to a non-CDL driver, such as going to the DMV and physically giving up the CDL. (Respondent's Brief, pp. 13-14). The Department offers no legal authority to back this proposition, and it is doubtful that any exists. Moreover, the physical surrender of one's CDL would leave a driver without even a Class D license. Additionally, the idea of physically surrendering the CDL contradicts the very argument the Department makes later in its Brief that disqualification only affects the CDL privileges but not the license, and that nothings needs to be done to reinstate a disqualified CDL except to wait out the disqualification period. If only the CDL "privileges" are affected, not the license, and one only need to wait for the disqualification period to expire, then why would anyone go through the trouble of making a trip to the DMV and having to get a new physical license at the end of the disqualification period? Moreover, it is helpful to think in terms of the DUI statutory scheme. A driver in a non-CDL DUI setting is not required to surrender their physical

license, despite say, an adverse ALS ruling sustaining the suspension; why then would a person with a CDL, having also received an adverse ruling, have to turn in the physical license even though the license is inherently invalid? And finally, the question arises, if the physical license is surrendered, does this impose upon the driver additional requirements at the end of the disqualification period, such as applying for a brand new CDL as if he/she never had one in the first instance? Remember, it is the position of the Department that one only has to wait out the disqualification period to get reinstatement.

Fifth, the Department attempts to explain away the case of *State v. Matalamaki*, 139 Idaho 341, 79 P.33d 162 (Ct. App. 2003), which held that, "[I]f the individual's driving *privileges* are revoked, *disqualified*, or suspended, *the individual's license is inherently invalid*." However, the Court therein did not differentiate between a Class A license and a Class D license. The key point is simply whether there was a disqualification, and the effect thereof.

Sixth, the Department wishes to compare disqualification with revocation, cancellation and suspension, ultimately coming to the conclusion that, "Unlike revocation, cancellation, or suspension, a disqualification only withdraws the privilege to operate a commercial vehicle. Disqualification does not affect the non-commercial driver's license. Revocations affect the person's license or privilege to operate a motor vehicle; suspensions affect the person's license or privilege to drive. A disqualification only affects the privilege to operate a commercial vehicle, not the license." (Respondent's Brief, p15). The Department's position ignores I.C. § 49-326 which governs the authority of the Department to suspend, d*isqualify* or revoke d*river's license and privileges,* which 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.

(emphasis added).

Seventh, the Department seeks to discount the application of I.C. § 49-328, 49-326 and 49-301(5). With respect to Idaho Code § 49-328, the section provides in pertinent part that when the period of disqualification of a driver's license has expired, or the reason for the disqualification or suspension no longer exists, the department shall reinstate the driver's license or driving privileges on application of the driver. This section demonstrates that affirmative action must be taken before a license is reinstated. If the prescribed affirmative steps are not taken, the license will remain disqualified, meaning it is inherently invalid (as to its Class A status). As to I.C. § 49-326, the statute governing the authority of the Department to suspend, d*isqualify* or revoke d*river's license and privileges,* the statute provides the Department's authority, upon hearing, is limited to, (in relevant part), disqualification of the license. Clearly, the Department's stated authority is limited to taking certain actions with respect to the driver's license, not simply the "privileges" associated therewith.

Eighth, as previously noted in earlier briefing, the Department wishes to utilize a "refusal conviction" as a basis for imposing Edwards' lifetime CDL disqualification. It is the position of the Department that it is the failure to take the breath test that is the offense, not the ultimate result of the criminal charge. (Respondent's Brief, p. 16). This position is erroneous. Idaho Code § 49-335(4) prescribes in relevant part that a person is disqualified for the period of time set forth in 49 CFR 383 if found to have committed two or more of the offenses committed two or more of the offenses specified in subsection one or two of Idaho Code § 49-335.

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

(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. (emphasis added).

And,

(4) Determining first and subsequent violations. For purposes of determining first and subsequent violations of the offenses specified in this subpart, each conviction for any offense listed in Tables 1 through 4 to this section resulting from a separate incident, whether committed in a CMV or non-CMV, must be counted.

Both of these sections explicitly refer to a "conviction".

Under 49 CFR 383.51(b) If a driver operates a motor vehicle and is convicted of …for a second conviction or refusal to be tested in a separate incident or any combination of offenses in this Table while operating a non-CMV, a CLP or CDL holder must be disqualified from operating a CMV for life, for refusing to take a test for alcohol concentration. (emphasis added).

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 has also cited to the definition under federal law.

Here, Mr. Edwards' "refusal conviction" was vacated and dismissed by the Court. Thus, there was no refusal conviction (unvacated adjudication of guilt), and similarly, no determination that Mr. Edwards had violated or failed to comply with the law. Consequently, the refusal cannot be utilized as a basis for imposing Edwards' lifetime

CDL disqualification.

III.

SUBSTANTIAL RIGHTS OF MR. EDWARDS HAVE BEEN PREJUDICED BY THE HEARING EXAMINER'S ACTIONS.

Idaho Code § 67-5279 requires that that the agency action be affirmed unless substantial rights of the appellant have been prejudiced. Here, there can be no question that Mr. Edwards' substantial rights have been prejudiced.

Our Supreme Court and Court of Appeals have recognized the importance of one's driving privileges. For example, the Supreme Court in *State v. Ankney*, 109 Idaho 1, 704 P.2d 333 (1985), discussing the suspension of Ankney's driver's license, said:

> Because the suspension of issued driver's licenses involves state action that adjudicates important interests of the licensees, licenses may not be taken away without procedural due process. *Dixon v. Love*, 431 U.S. 105, 97 S.Ct. 1723, 52 L.Ed.2d 172 (1977); *Bell v. Burson*, 402 U.S. 535, 91 S.Ct. 1586, 29 L.Ed.2d 90 (1971).

State v. Ankney, 109 Idaho at 3-4. Concerning the nature and weight of the private interest affected, the Supreme Court added:

> It is well recognized that an individual's interest in his driver's license is substantial. See *Mackey v. Montrym,* 443 U.S. 1, 11, 99 S.Ct. 2612, 2617, 61 L.Ed.2d 321 (1979); *Dixon v. Love,* 431 U.S. 105, 112, 97 S.Ct. 1723, 1727-28, 52 L.Ed.2d 172 (1977).

State v. Ankney, 109 Idaho at 4. Subsequently, in *Matter of McNeely*, 119 Idaho 182, 804 P.2d 911 (Idaho App. 1990), a case involving a McNeely's driver's license suspension under Idaho Code § 18-8002 for the failure to submit to a BAC test at the time of his arrest for DUI, the Court of Appeals reiterated:

> Suspension of a driver's license pursuant to the implied consent statute is a state action that adjudicates important interests of the licensee; the licensee

> cannot be divested of this liberty interest without procedural due process. See Dixon v. Love, 431 U.S. 105, 97 S.Ct. 1723, 52 L.Ed.2d 172 (1977); State v. Ankney, supra.

Matter of McNeely, 119 Idaho at 190. The Court of Appeals then elaborated on McNeely's interest in his driver's license:

> It is well recognized that an individual's interest in a driver's license is substantial. See *Mackey v. Montrym, supra*; *State v. Ankney, supra*. However, the licensee's interest is not so substantial as to require a presuspension hearing, *Dixon v. Love*, 431 U.S. at 113, 97 S.Ct. at 1727-28, although it may be affected by the length of the suspension period and timeliness of a postsuspension review proceeding. *Mackey v. Montrym*, 443 U.S. at 12, 99 S.Ct. at 2618. Under I.C. § 18-8002, the licensee who refuses to take a BAC test is entitled to a timely postsuspension hearing within thirty days of seizure of his or her driver's license.

Matter of McNeely, 119 Idaho at 190. In *Driver's License Suspension of Platz*, 154 Idaho 960, 303 P.3d 647 (App. 2013), the Court of Appeals recently affirmed that the procedural due process rights owed in an ALS suspension proceeding, are also owed in a CDL proceeding:

> In *Bell,* 151 Idaho 659, 262 P.3d 1030, the Idaho Supreme Court held a driver is entitled to procedural due process because an ALS involves state action that adjudicates important interests of the licensees. *Bell,* 151 Idaho at 664-65, 262 P.3d at 1035-36 (citing *Dixon v. Love,* 431 U.S. 105, 112, 97 S.Ct. 1723, 1727, 52 L.Ed.2d 172, 179-80 (1977); *State v. Ankney,* 109 Idaho 1, 3-4, 704 P.2d 333, 335-36 (1985); *In re Gibbar,* 143 Idaho 937, 945, 155 P.3d 1176, 1184 (Ct.App.2006)). We conclude that the same rights attach relative to a CDL proceeding.

Driver's License Suspension of Platz, 154 Idaho at 960, 303 P.3d 647 (App. 2013).

In the present case, Mr. Edwards' interest in his commercial driver's license is very substantial. Mr. Edwards' commercial driving privileges stand to be suspended for life should the Department's wrongful license disqualification be upheld. Clearly, for the reasons outlined above, the erroneous deprivation of Mr. Edwards' commercial driving privileges, upon which Mr. Edwards relies on for his livelihood in the trucking industry,

prejudices a very substantial right.

IV.

MR. EDWARDS IS ENTITLED TO AN AWARD OF COSTS AND ATTORNEY FEES.

I.A.R. 40 addresses an award of costs under appropriate circumstances. It states in pertinent part:

> (a) Costs to Prevailing Party. With the exception of post-conviction appeals and appeals from proceedings involving the termination of parental rights or an adoption, costs shall be allowed as a matter of course to the prevailing party unless otherwise provided by law or order of the Court.

I.C. § 12-117 delineates those circumstances in which attorney's fees shall be awarded. It states:

> 12-117 ATTORNEY'S FEES, WITNESS FEES AND ESPENSES AWARDED IN CERTAIN INSTANCES. (1) Unless otherwise provided by statute, in any proceeding involving as adverse parties a state agency or a political subdivision and a person, the state agency, political subdivision or the court hearing the proceeding, including on appeal, shall award the prevailing party reasonable attorney's fees witness fees and other reasonable expenses, if it finds that the nonprevailing party acted without a reasonable basis in fact or law.

I.A.R. 41 discusses some of the particulars involved in requesting an award of attorney fees on appeal, thus solidifying the conclusion that an award of attorney fees on appeal may be appropriate and available in certain instances.

In the instant case, costs should awarded to Mr. Edwards should the Court determine he is the prevailing party. Additionally, Mr. Edwards should be awarded his attorney's fees, assuming he is the prevailing party, as the Department acted without a reasonable basis in fact or law, as is apparent in Mr. Edwards' briefing to this Court.

V.

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, and he be awarded his reasonable costs and attorney's fees.

DATED this 2nd day of April, 2019.

/s/ R.D. Watson_____
R.D. Watson
Attorney for Bruce A. Edwards