

ATTORNEY GENERAL'S OFFICE

DEC 01 2014

EXECUTIVE AGENCIES

COURT OF COMMON PLEAS, GUERNSEY COUNTY, OHIO

GARY EUGENE NYKILE, :

Plaintiff/Appellant, :

Case No: 14-CV-432

vs. :

OHIO BUREAU OF MOTOR VEHICLES, :

Defendant/Appellee. :

FILED  
COMMON PLEAS COURT  
NOV 26 2014  
GUERNSEY COUNTY, OHIO  
Teresa A. Dankovic, Clerk of Court

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OPINION

Rendered on November 25, 2014

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*Andrew J. Warhola for Jack A. Blakeslee, for Appellant*

*Frederico G. Barrera, for Appellee*

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**APPEAL from the order of the Ohio Bureau of Motor Vehicles.**

**Ellwood, J.**

Appellant Gary E. Nykile is appealing to the Court of Common Pleas, Guernsey County, Ohio from the order of the Ohio Bureau of Motor Vehicles dated September 18, 2014 denying his request for a hearing as being untimely, and ordering his CDL be disqualified from September 8, 2014 to September 8, 2015.

The Court finds that “an appeal from an administrative agency in Ohio is governed by R.C. 119.12, which states in pertinent part: ‘The Court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire

record and such additional evidence as the court has admitted, that the order is supported by reliable, probative, and substantial evidence and is in accordance with law. In the absence of such a finding, it may reverse, vacate, or modify the order to make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law.’ The court of common pleas is restricted to determining whether the order is so supported.” *Our Place, Inc. v. Ohio Liquor Control Comm.* (1992), 63 Ohio St.3d 570.

“The evidence required by R.C. 119.12 can be defined as follows: (1) ‘Reliable’ evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. (2) ‘Probative’ evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. (3) ‘Substantial’ evidence is evidence with some weight; it must have importance and value.”

The Court finds, here, that Plaintiff/Appellant Nykile was arrested for an OVI offense on April 5, 2014 and was issued an Administrative License Suspension from April 5, 2014 through April 5, 2015 for refusal to submit to a test. Plaintiff/Appellant Nykile was convicted of that OVI offense in Cambridge Municipal Court on July 28, 2014. The Cambridge Municipal Court suspended his license from April 4, 2014 through October 2, 2014. The Ohio Bureau of Motor Vehicles received his conviction and disqualified Plaintiff/Appellant Nykile’s CDL from September 8, 2014 through September 8, 2015.

The Court finds R.C. 4506.16(D)(1) provides, “The registrar of motor vehicles shall disqualify any holder of a commercial driver's license, or any operator of a commercial motor vehicle for which a commercial driver's license is required, from operating a commercial motor vehicle as follows: (1) Upon a first conviction for a violation of any provision of divisions (A)(2) to (12) of section 4506.15 of the Revised Code or a similar law of another state or a foreign jurisdiction, or upon a first suspension imposed under section 4511.191 of the Revised Code or a similar law of another state or foreign jurisdiction, one year.”

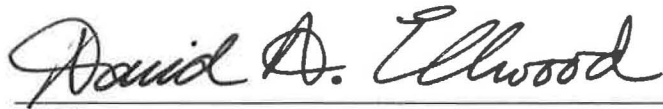
The Court finds that it is arbitrary for the Ohio Bureau of Motor Vehicles to attempt to use discretion, delegated by the Constitution to the Courts, to use any date other than the date of the conviction to begin the disqualification of Plaintiff/Appellant Nykile’s CDL.

The Court finds, upon consideration of the entire record, that the decision of the Ohio Bureau of Motor Vehicles is not supported by substantial evidence and is not in accordance with Ohio law. The Court finds that the decision by the Ohio Bureau of Motor Vehicles must be modified in that the date of the disqualification must run from the date of conviction in this matter; July 28, 2014 through July 28, 2015.

Costs are assessed to the Appellee, Ohio Bureau of Motor Vehicles.

**FINAL APPEALABLE  
ORDER  
NO JUST CAUSE FOR DELAY**

**IT IS SO ORDERED.**



JUDGE OF THE COMMON PLEAS COURT  
GUERNSEY COUNTY, OHIO

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ENTRY – CASE NO. 14-CV-432

cc: Jack A. Blakeslee (Attorney for Appellant)

Andrew J. Warhola (Stand-in Counsel for Appellant)

Frederico G. Barrera, III and Zachary C. Schaengold, Assistant Attorneys  
General, Executive Agencies Section, 30 East Broad Street, 26<sup>th</sup> floor, Columbus,  
OH 43215 (Attorney for Appellee, Ohio Bureau of Motor Vehicles)

Mike Rankin, Registrar, Ohio Bureau of Motor Vehicles, P.O. Box 16520,  
Columbus, OH 43216-6520