

JUN 02 2016

COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO

EXECUTIVE AGENCIES

DANIEL E. JONES,
Appellant,

CASE NO. 2015CVF00624

v.

DECISION/ENTRY

DONALD J. PETIT, REGISTRAR,
OHIO BUREAU OF MOTOR
VEHICLES,
Appellee.

Robert H. Lyons, Attorney for Appellant, 8310 Princeton-Glendale Road, West Chester, Ohio 45069.

Zachary Schaengold, Attorney for Appellee, Assistant Attorney General, Executive Agencies, 30 East Broad Street, 26th Floor, Columbus, Ohio 43215.

BARBARA A. WILSON
CLERK OF COMMON PLEAS COURT
CLERMONT COUNTY, OHIO
2016 MAY 27 PM 2:40

FILED
COPY

This matter is before the Court upon Appellant Daniel E. Jones' administrative appeal under Section 119.12 of the Ohio Revised Code. Section 119.12(A)(1) provides that "any party adversely affected by any order of an agency issued pursuant to an adjudication . . . revoking or suspending a license," to appeal "from the order of the agency to the court of common pleas of the county in which the place of business of the licensee is located or the county in which the licensee is a resident." Jones appeals the final adjudication order of Appellee Donald J. Petit, Registrar, Ohio Bureau of Motor Vehicles ("BMV"), dated April 28, 2015 ("Order").¹ When considering an appeal,

"The court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and any additional evidence 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 this finding, it may reverse, vacate, or modify the order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in

¹ See Notice of Appeal of the Ohio Bureau of Motor Vehicle's Final Adjudication Order, Ex. 1.

accordance with law. The court shall award compensation for fees in accordance with section 2335.39 of the Revised Code to a prevailing party, other than an agency, in an appeal filed pursuant to this section.”²

Appellant Jones asserts that the Order is not supported by reliable, probative, and substantial evidence and is not in accordance with the law. The appellant requests that this court vacate the Order disqualifying the appellant’s commercial driver’s license for a period of one year.

The relevant procedural history of this case is as follows. Appellant Jones holds a Class A commercial driver’s license, last issued or renewed on February 11, 2013.³ This license permits him to operate “any combination of vehicles with a combined gross vehicle weight or combined gross vehicle weight rating of twenty-six thousand one pounds or more . . .”⁴ On November 19, 2014, Jones was convicted of a first offense DUI in Kentucky under Kentucky Revised Statutes 189A.010.⁵ On December 3, 2014, Appellee BMV sent a written notice of disqualification to Jones proposing to disqualify Jones’ Ohio commercial driver’s license for a period of one year pursuant to Section 4506.16 of the Ohio Revised Code.⁶ R.C. 4506.16(D)(1) requires:

“(D) The registrar of motor vehicles shall disqualify any holder of a commercial driver's license or commercial driver's license temporary instruction permit, or any operator of a commercial motor vehicle for which a commercial driver's license or permit 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;”

² R.C. 119.12(M).

³ Cert. Rec. Doc. 4.

⁴ R.C. 4506.12.

⁵ Cert. Rec. Doc. 4 and Doc. 18.

⁶ Cert. Rec. Doc. 17.

The notice listed the underlying Kentucky OVI/DUI case and conviction date and informed Jones of his right to an administrative hearing.⁷ For Jones' license to be revoked under R.C. 4506.16(D)(1), KRS 189A.010 must be similar to a violation of any provision of divisions R.C. 4506.15(A)(2) to (12) or R.C. 4511.191.

An administrative hearing was held on April 8, 2015.⁸ At this hearing, Jones submitted a certified copy of his conviction plea agreement.⁹ The conviction plea listed the following: (1) the form was a DUI guilty plea form; (2) the relevant statute was KRS 189A.010; (3) Jones was charged with a first DUI offense on June 26, 2014; (4) Jones pled guilty to that offense and signed his plea in open court on November 19, 2014; and (5) Jones was represented by counsel.¹⁰ After the hearing, the hearing examiner found, by a preponderance of the evidence, that: (1) Jones had been convicted under KRS 189A.010; (2) KRS 189A.010 was similar to R.C. 4511.19 and the offense of violating R.C. 4511.19 pursuant to R.C. 4506.15(A)(6); and (3) Jones' commercial driver's license should be disqualified for a period of one year under R.C. 4506.16(D)(1) because he has a first conviction of a violation of R.C. 4506.15(A)(6) or a similar law of another state.¹¹

Jones objected to the hearing examiner's report and recommendation. The Registrar found that KRS 189A.010 was "clearly akin to R.C. 4511.19," which prohibits operating a vehicle while under the influence of alcohol. On April 28, 2015, Appellant Jones received the Order from Appellee BMV approving the one year disqualification based on the hearing examiner's finding that the State of Ohio proved, by a preponderance of evidence, that Jones has a first conviction of a violation of a statute similar to R.C. 4506.15(A)(6).

⁷ Id.

⁸ Cert. Rec. Docs. 9 – 16.

⁹ Cert. Rec. Doc. 18, Transcript p. 11 – 12.

¹⁰ Cert. Rec. Doc. 18, Ex. 1.

¹¹ Cert. Rec. Doc. 9.

In his memorandum in support of his appeal, Appellant Jones argues that revocation of his commercial driver's license was not supported by reliable, probative, and substantial evidence and was not in accordance with law because the BMV failed to prove that KRS 189A.010 is similar to R.C. 4511.19. Whether the Order must be affirmed, modified, or reversed depends upon whether the underlying decision was supported by reliable, probative, and substantial evidence and whether the Order was in accordance with law.

It is undisputed that Jones was convicted of a violation of KRS 189A.010. Therefore, the relevant inquiry is whether the hearing examiner's determination that R.C. 4511.19(A)(1) is similar to K.R.S. 189A.010(1)(a) – (c) is supported by reliable, probative, and substantial evidence.

Section 4511.19(A)(1)(a) – (b) provides:

(A)(1) No person shall operate any vehicle, streetcar, or trackless trolley within this state, if, at the time of the operation, any of the following apply:

(a) The person is under the influence of alcohol, a drug of abuse, or a combination of them.

(b) The person has a concentration of eight-hundredths of one percent or more but less than seventeen-hundredths of one percent by weight per unit volume of alcohol in the person's whole blood.

K.R.S. 189A.010(1)(a) – (c) provides:

(1) A person shall not operate or be in physical control of a motor vehicle anywhere in this state:

(a) Having an alcohol concentration of 0.08 or more as measured by a scientifically reliable test or tests of a sample of the person's breath or blood taken within two (2) hours of cessation of operation or physical control of a motor vehicle;

(b) While under the influence of alcohol;

(c) While under the influence of any other substance or combination of substances which impair one's driving ability.

A review of these portions of the two statutes reveals that they are similar.

Section 4506.15(A)(6) of the Revised Code provides that:

“No person who holds a commercial driver's license or commercial driver's license temporary instruction permit or who operates a motor vehicle for which a commercial driver's license or permit is required shall do any of the following:

* * * * *
(6) Drive a motor vehicle in violation of section 4511.19 of the Revised Code or a municipal OVI ordinance as defined in section 4511.181 of the Revised Code;

Further, R.C. 4506.16(D)(1) requires:

“(D) The registrar of motor vehicles shall disqualify any holder of a commercial driver's license or commercial driver's license temporary instruction permit, or any operator of a commercial motor vehicle for which a commercial driver's license or permit is required, from operating a commercial motor vehicle as follows:

(2) 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;”

Based upon the foregoing statutes, the Court finds that the hearing examiner's determination that the “State of Ohio has proven by a preponderance of the evidence that Petitioner has a first conviction of a violation of Section 4506.15(A)(6) of the O.R.C. or a similar law of another state and is subject to a one year disqualification pursuant to Section 4506.16(D)(1) of the O.R.C.” was supported by reliable, probative, and substantial evidence and was in accordance with law.

Under these circumstances, the Court affirms the BMV's final adjudication order dated April 28, 2015.

IT IS SO ORDERED.



JUDGE THOMAS R. HERMAN

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Decision was served upon the following by regular U.S. Mail or Electronic Mail on this 27th day of May, 2016.

Robert H. Lyons
Zachary C. Schaengold



Jennifer Rose
Administrative Assistant