

**BEFORE THE
INDIANA BUREAU OF MOTOR VEHICLES**

IN THE MATTER OF [REDACTED])	
)	
DL# [REDACTED])	CASE NO. 14-CD-004
)	
Petitioner.)	
)	
)	

FINAL ORDER

1. This matter comes before me as a result of a Notice of Appeal submitted by Petitioner [REDACTED] seeking administrative review of a decision by the Indiana Bureau of Motor Vehicles ("BMV") to impose suspend her commercial driving privileges for one (1) year as a result of her conviction for leaving the scene of an accident on in Bartholomew Superior Court #2 on August 13, 2014. The Petitioner's letter is undated but was treated as timely filed.
2. This matter was referred to Administrative Law Judge Rachael C. Ehlich, Esq. for review and the issuance of a Recommended Order per Ind. Code § 4-21.5-3-27(a) and 140 IAC 1-1-8, which was completed on October 14, 2014. A copy of the Recommended Order issued by ALJ Ehlich is attached hereto.
3. By letter dated October 31, 2014, Petitioner [REDACTED] objected to the Recommended Order per Ind. Code § 4-21.5-3-29(d) and 140 IAC 1-1-11, and urges me to dissolve the Recommended Order, reverse the decision of the ALJ and/or grant her a rehearing of this matter.
4. The Recommended Order is hereby AFFIRMED, and Petitioner's Notice of Appeal and Objection to the Recommended Order is DENIED. The one (1) year suspension of Petitioner [REDACTED]

commercial driving privileges will remain in place, as required by United States and Indiana law, for the reasons expressed below.

5. It is undisputed that on August 13, 2014, Petitioner [REDACTED] was found guilty of "Accident Leaving the Scene/Failure to Report-Property Damage," a violation of Ind. Code § 9-26-1-4, in the Bartholomew Superior Court No. 2.
6. Commercial driver's licenses are regulated by federal law. 49 C.F.R. § 383.1 *et seq.* These regulations govern all persons who operate commercial motor vehicles and apply to all States, including Indiana. 49 C.F.R. § 383.3(a).
7. Part (5) of table 1 to 49 C.F.R. § 383.51 requires the State of Indiana to disqualify anyone convicted for the first time of "leaving the scene of an accident" from operating a commercial motor vehicle for a period of one (1) year.
8. 49 C.F.R. § 383 was adopted as Indiana law by Ind. Code § 9-24-6-2(d) ("49 CFR 383 through 384 and 49 CFR 393.120 are adopted as Indiana law."). Per Ind. Code § 9-24-6-8((3), a conviction for leaving the scene of an accident under Ind. Code § 9-26-1 is a disqualifying offense. Under Ind. Code § 9-24-6-9, anyone convicted of a disqualifying offense "is disqualified for one (1) year from driving a commercial motor vehicle."
9. Thus, both federal and Indiana law require the Indiana BMV to suspend Petitioner [REDACTED] commercial driving privileges for a period of one (1) year.
10. Petitioner [REDACTED] first argues that 49 CFR § 383.51 only applies to leaving the scene of accidents involving two (2) vehicles. However, there is nothing in that regulation that limits the mandatory disqualification to accidents involving multiple vehicles. Further, Ind. Code § 9-26-1-4 specifically applies to single-vehicle accidents. Thus, the Petitioner's argument fails.
11. Petitioner [REDACTED] next argues, without citation to any law, that the BMV "has the power to modify the one year suspension" and that the BMV should consider the impact of this result upon her

ability to earn a living. However, a review of the state and federal laws cited above reveals nothing that could be interpreted to provide the Indiana BMV any discretion in this area; the one (1) year disqualification is mandatory under both federal and state law.

12. Finally, Petitioner [REDACTED] argues that the BMV should consider various facts related to her conviction, such as whether the stop sign was knocked over, whether damages or injuries resulted from the accident, what she was told by her employer, and so forth. However, these are all arguments that should be directed to the Bartholomew Superior Court #2. Once the Petitioner was convicted of leaving the scene of an accident, both federal and Indiana law requires the BMV to suspend her commercial driving privileges for a period of one (1) year.

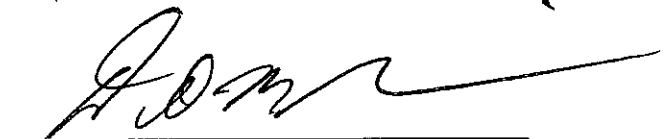
13. Petitioner [REDACTED] is hereby notified that this is a FINAL ORDER. Petitioner may seek judicial review of this FINAL ORDER by filing a petition for review with the appropriate court within thirty (30) days after the date that notice of this FINAL ORDER was served, plus three (3) additional days if notice is served through the United States mail. See: Ind. Code §§ 4-21.5-3-2, 4-21.5-5.

14. Pursuant to Ind. Code § 4-21.5-3-32, this FINAL ORDER shall be made available for public inspection and copying. It shall be indexed by name and subject. All identifying details shall be deleted from the public copy of this Order to the extent required by Ind. Code § 5-14-3 or other law, with written justification for all deletions explained in writing and attached to the public copy of this FINAL ORDER.

SO ORDERED.

11-6-2014

Date



Donald M. Snemis, Commissioner
Indiana Bureau of Motor Vehicles

Written notice of this order shall be provided to:

[REDACTED]

BMV Credential Management

Rachael C. Ehlich, Esq.

BEFORE THE
INDIANA BUREAU OF MOTOR VEHICLES

IN THE MATTER OF:

) CASE NO. 14-CD-004
)
)
)

UID: [REDACTED]

RECOMMENDED ORDER

I. RECOMMENDED ORDER

Based upon a consideration of the following facts, law, and/or administrative regulations, this ALJ affirms the action taken by the BMV.

II. STATEMENT OF CASE

- a. [REDACTED] ("[REDACTED]") requested a hearing following notice of the Bureau of Motor Vehicles' ("BMV") disqualification of her commercial driver's license ("CDL").
- b. An administrative hearing was held on October 9, 2014.
- c. [REDACTED] appeared by telephone.
- d. In attendance was BMV Staff Attorney Michael Carter ("Carter") and BMV employee Melissa Lechner.
- e. The hearing was recorded.

III. ISSUE(S)

Whether the BMV properly disqualified [REDACTED] CDL.

IV. FINDINGS OF FACT

- a. On or about August 14, 2014, the BMV processed a Certification of Indiana Abstract of Court Record ("Abstract") from the Bartholomew Superior Court. The Abstract identified [REDACTED] by name, date of birth, and Driver's License Number and indicated a



conviction for Accident Leaving the Scene/Failure to Report – Property Damage. The code cite for the offense provided on the Abstract was Ind. Code § 9-26-1-4.

- b. On August 15, 2014, the BMV notified [REDACTED] that her CDL would be disqualified for one (1) year from August 25, 2014 through August 25, 2015 as a result of the conviction. Lechner testified that this suspension is mandated by 49 CFR Table 1 to 383.51.
- c. On August 25, 2015, the BMV sent [REDACTED] a notice of effective disqualification.
- d. [REDACTED] testified that she only left the scene of the accident (the school bus [REDACTED] was driving slid on ice and knocked over a stop sign) because the school official [REDACTED] spoke to when she called to report the accident told her to continue on with her school bus route.
- e. [REDACTED] provided a letter from her public defender which stated that the judge did not suspend [REDACTED] operator's license or CDL as part of her sentence.
- f. This ALJ finds that the BMV is bound by state law to impose the suspension, regardless of the judge's sentencing order.

V. CONCLUSIONS OF LAW

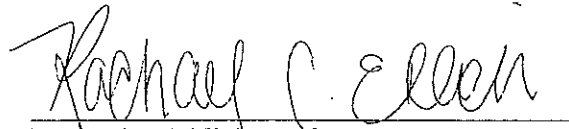
- a. Ind. Code § 9-24-6-8(b) states that leaving the scene of an accident involving the driver's commercial motor vehicle in violation of IC 9-26-1 is a disqualifying offense.
- b. Ind. Code 9-24-6-9 states that a driver who is convicted for the first time of a disqualifying offense described in section 8(1) through 8(4) or 8(6) of this chapter is disqualified for one (1) year from driving a commercial motor vehicle.



VI. APPEAL RIGHTS

Either party may request a reconsideration of this recommended order by mailing a written request to the following address: Indiana Bureau of Motor Vehicles, Hearing Department, 100 North Senate Ave., Rm N404, Indianapolis, IN 46204. Requests for reconsideration must be received by the BMV within 18 days of the date this recommended order is signed. If no request for reconsideration is received by the BMV within 18 days, this recommended order becomes the final order of the BMV on the 19th day.

DATED: October 14, 2014



Rachael C. Ehlich
Administrative Law Judge
Indiana Bureau of Motor Vehicles
Hearing Department
100 N. Senate Avenue
Indianapolis, IN 46204
(317) 234-1958

A copy of the foregoing was sent to the following:

██████████

Indiana Bureau of Motor Vehicles

