STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0401

Jason Wallace Horsman, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed October 21, 2019
Affirmed
Bjorkman, Judge

Steele County District Court
File No. 74-CV-18-2043

Brenton M. Tunis, Thomas R. Braun, Restovich Braun & Associates, Rochester, Minnesota (for appellant)

Keith Ellison, Attorney General, Stephen D. Melchionne, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Bratvold, Presiding Judge; Bjorkman, Judge; and Jesson, Judge.

U N P U B L I S H E D O P I N I O N

BJORKMAN, Judge

Respondent commissioner of public safety disqualified appellant's commercial driver's license (CDL) because he was twice convicted of driving while impaired (DWI). But because of commissioner error, the disqualification was delayed. Appellant challenges

the district court's denial of his petition to reinstate his CDL, arguing that (1) the district court made clearly erroneous factual findings, (2) the disqualification is arbitrary and capricious, and (3) the disqualification is unconstitutional. We affirm.

FACTS

Appellant Jason Horsman was a commercial truck driver. On May 10, 2006, he pleaded guilty and was convicted of DWI. As a result, the commissioner disqualified Horsman's CDL for one year. On June 18, 2014, he pleaded guilty and was convicted of a second DWI. Horsman's CDL was again disqualified.

Starting in August 2014, Horsman participated in the ignition interlock program (program). His standard driver's license was conditionally reinstated, and the CDL disqualification was erroneously lifted. Horsman successfully completed the program in January 2015 and received notice that he "no longer ha[d] any restraints on [his] driving privileges."

In September 2018, the commissioner corrected Horsman's driving record to reflect his CDL disqualification and notified Horsman that, because of his second DWI conviction, his CDL was disqualified for life effective October 8, 2018.

Horsman petitioned the district court to reinstate his CDL. After a hearing, the district court denied reinstatement but granted Horsman's alternative request to amend his driving record to reflect a disqualification date of June 18, 2014. Horsman appeals.

D E C I S I O N

Minnesota law requires the commissioner to "disqualify a person from operating commercial motor vehicles in accordance with the driver disqualifications and penalties in

[federal regulations]." Minn. Stat. § 171.165, subd. 1 (2018).[1] For a first conviction of driving "under the influence of alcohol as prescribed by State law," federal regulations mandate a one-year disqualification. 49 C.F.R § 383.51(b) (2016). For a second conviction, the state must disqualify the driver for life, although a driver who demonstrates successful completion of "an appropriate rehabilitation program" may have his CDL reinstated after 10 years. *Id.* (a)(6), (b) (2016).

A person whose CDL has been disqualified may petition the district court for reinstatement under Minn. Stat. § 171.19 (2018). In a reinstatement proceeding, the district court conducts a trial de novo to determine whether a driver is entitled to reinstatement. *Pallas v. Comm'r of Pub. Safety*, 781 N.W.2d 163, 166 (Minn. App. 2010). The petitioner has the burden of proof. *Constans v. Comm'r of Pub. Safety*, 835 N.W.2d 518, 523 (Minn. App. 2013). Courts presume regularity and correctness in the commissioner's disqualification determination but may reverse a disqualification if it was arbitrary, unreasonable, or not within the commissioner's jurisdiction and powers. *Pallas*, 781 N.W.2d at 167.

On appeal, we defer to the district court's credibility determinations and will not disturb the district court's factual findings unless they are clearly erroneous. *Constans*, 835 N.W.2d at 523. But we "review de novo the district court's application of the law." *Id.*

[1] The relevant portion of the disqualification statute has remained unchanged since before Horsman's first DWI. *See* Minn. Stat. § 171.165, subd. 1 (Supp. 2005).

I. The district court's factual findings are not clearly erroneous.

Horsman challenges two factual findings. First, he contends the district court clearly erred by finding that the delay in disqualifying his CDL was the result of a computer error related to his participation in the program and that the commissioner, upon discovering the mistake, "attempted to remedy it consistent with federal and state regulations as soon as possible." This challenge is misplaced. While Horsman correctly observes that the record contains no evidence of a computer error,[2] it otherwise amply supports the finding regarding the reason for the delay. Horsman's certified driving record notes Horsman's second DWI conviction in June 2014 and a resulting CDL disqualification. Reference to the disqualification is followed by a series of entries reflecting Horsman's participation in the program, his successful completion in January 2015 and removal of "any restraints on [his] driving privileges," and finally a September 2018 entry noting "outstanding [r]equirements" and effectuating Horsman's lifetime CDL disqualification. On this record, the district court did not clearly err by finding that Horsman's participation in the program led to the mistaken removal of his CDL disqualification and that the commissioner discovered and promptly remedied the mistake.

Moreover, any error in the district court's findings regarding the reason for the delay and the promptness of the commissioner's corrective action does not warrant reversal because it did not impair his substantial rights. *See* Minn. R. Civ. P. 61. As discussed below, the commissioner was required to disqualify Horsman's CDL based on his second

[2] The explanation on which the district court relied comes solely from the commissioner's counsel's unsworn statements at the hearing.

DWI conviction. The reason for the commissioner's delay in doing so has no bearing on the validity of the disqualification.

Horsman next challenges the finding that when "he received his CDL by mistake" in January 2015, "he kept quiet and hoped to benefit from the error." He points to his testimony that he "call[ed] the commercial driver's license department and the state to verify" and was left with "the understanding that unless [he] received another violation that, what [he] had on [his] record, it would stay valid." But cross-examination revealed this testimony to be implausible. And, even without directly contrary evidence, the district court was not required to accept it. *See Am. Bank of St. Paul v. City of Minneapolis*, 802 N.W.2d 781, 789 (Minn. App. 2011) (stating that "a fact-finder is not required to accept uncontradicted testimony if the surrounding facts and circumstances afford reasonable grounds for doubting its credibility" (quotation omitted)). Because we defer to the district court's determination that Horsman was not credible, *Constans*, 835 N.W.2d at 523, Horsman's argument is unavailing.

II. The commissioner's decision to disqualify Horsman's CDL is not arbitrary and capricious.

A state agency's decision is arbitrary and capricious if it

> (1) relie[s] on factors that the legislature had not intended it to consider, (2) fail[s] to consider an important aspect of the problem, (3) offer[s] an explanation for the decision that runs counter to the evidence, (4) . . . is so implausible that it could not be ascribed to a difference in view or the product of agency expertise, or (5) . . . reflects the agency's will and not its judgment.

Pallas, 781 N.W.2d at 167.

Horsman first contends his CDL disqualification is arbitrary and capricious because the commissioner failed to articulate a sufficient reason for the delay in issuing the disqualification. We disagree. It is the disqualification itself, not the delay, that is the decision at issue. And the delay has no bearing on the validity of the disqualification, which is mandated by Minn. Stat. § 171.165, subd. 1, and 49 C.F.R § 383.51(b). Even if we accept Horsman's argument that a state's failure to timely disqualify a driver constitutes substantial noncompliance with federal regulations, *see* 49 C.F.R. § 384.231(c) (2016) (requiring state to "disqualify a driver as expeditiously as possible"), the consequence is not impairment of the state's authority to issue the disqualification. Rather, the potential consequences are reduction in federal funding to the state, 49 C.F.R. §§ 384.401-.402 (2016), or decertification of the state's CDL program, 49 C.F.R. § 384.405 (2016). Indeed, since state and federal law plainly require lifetime disqualification of a driver's CDL after a second DWI conviction, it would have been arbitrary and capricious for the commissioner not to have disqualified Horsman's CDL simply because of the delay.

Horsman next argues that his disqualification is arbitrary and capricious because his 2014 conviction of having an alcohol concentration of 0.08 or more within two hours of driving is not a conviction of driving "under the influence of alcohol as prescribed by State law." 49 C.F.R § 383.51(b). We are not persuaded. Minnesota law plainly indicates that all violations of Minn. Stat. § 169A.20, subd. 1 (2018), constitute driving "under the influence" or "while impaired." *See* Minn. Stat. §§ 169A.03, subd. 20 (defining "prior impaired driving conviction" as including "a prior conviction under . . . section 169A.20 (driving while impaired)"), .54, subd. 1 (referring to conviction under "section 169A.20"

as "driving while impaired") (2018). A DWI conviction based on alcohol concentration, under Minn. Stat. § 169A.20, subd. 1(5), is therefore a conviction of driving "under the influence of alcohol as prescribed by State law." Disqualifying Horsman's CDL based on that conviction is not arbitrary and capricious.

III. Horsman's CDL disqualification is not unconstitutional.

Horsman asserts several constitutional arguments, again focusing on the commissioner's delay in issuing the disqualification rather than the disqualification itself. We review de novo the interpretation and application of the federal and state constitutions to established facts. *Riehm v. Comm'r of Pub. Safety*, 745 N.W.2d 869, 877 (Minn. App. 2008), *review denied* (Minn. May 20, 2008).

Horsman first contends the disqualification of his CDL several years after his second DWI conviction violated his right to due process under the United States and Minnesota Constitutions. *See* U.S. Const. amend XIV, § 1; Minn. Const. art. I, § 1. But he acknowledges that reversal is warranted for a claimed due-process violation only upon a showing of prejudice. "An appellant cannot assert a procedural due-process claim without first establishing that he has suffered a direct and personal harm resulting from the alleged denial of his constitutional rights." *Riehm*, 745 N.W.2d at 877 (quotation omitted). Horsman has not demonstrated any such harm from the commissioner's delay in issuing the mandatory disqualification of his CDL.

Rather, as the district court observed, Horsman "had the benefit of his CDL during a period where he should have not had his CDL." *See id.* at 877-78 (observing that a driver who retains his license during revocation proceedings does not suffer prejudice from

delay). And because the district court amended Horsman's driving record to reflect that the lifetime disqualification began upon his second DWI conviction, rather than the date the commissioner discovered and remedied its mistake, the delay did not impair Horsman's ability to rehabilitate and seek reinstatement after ten years.[3] Nor was Horsman prejudiced, as he claims, by forgoing employment or educational opportunities in the four years between his second DWI conviction and CDL disqualification. The record supports the district court's findings that Horsman could continue his employment in a comparable non-driving position and that Horsman knew his CDL would be revoked after his second DWI and he "kept quiet and hoped to benefit from the error." Because Horsman has not demonstrated any prejudice from the commissioner's delay in issuing his mandatory CDL disqualification, his due-process claim fails.

Horsman also argues that his disqualification is unconstitutional because the "relationship between the Federal regulations and Minn. Stat. § 171.165 [is] vague" with respect to which convictions require disqualification. This argument is likewise unavailing. The void-for-vagueness doctrine applies to criminal statutes, requiring that "a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage

[3] Horsman cites numerous foreign cases for the proposition that substantial delay itself indicates prejudice. Those cases are inapposite because they involve personal driver's licenses, not CDLs, *see Terraciano v. Pennsylvania*, 753 A.2d 233 (Penn. 2000); *Davis v. S. C. Dep't of Motor Vehicles*, 800 S.E.2d 493 (S.C. Ct. App. 2017); *Wilson v. S. C. Dep't of Motor Vehicles*, 796 S.E.2d 541 (S.C. Ct. App. 2017), or involve delayed imposition of a temporary CDL disqualification, not a lifetime disqualification, *Jobe v. La. Dep't of Pub. Safety*, 94 So. 3d 217 (La. App. 2 Cir. 2012) (dissenting opinion noting that CDL disqualification is mandatory upon DWI conviction).

arbitrary and discriminatory enforcement." *Dunham v. Roer*, 708 N.W.2d 552, 568 (Minn. App. 2006) (quotation omitted), *review denied* (Minn. Mar. 28, 2006). Even assuming the doctrine applies to Minn. Stat. § 171.165, which is a civil statute,[4] our foregoing analysis demonstrates that Minnesota law defines with sufficient definiteness which convictions result in disqualification under Minn. Stat. § 171.165. Accordingly, Horsman's vagueness challenge fails.

Finally, Horsman contends his disqualification is unconstitutional because the delay in issuing the disqualification violates his right "to obtain justice . . . promptly." Minn. Const. art. I, § 8. This contention ignores established caselaw, which indicates that article I, section 8, is not an independent basis for relief. *See State v. Lindquist*, 869 N.W.2d 863, 873 (Minn. 2015); *Hoeft v. Hennepin County*, 754 N.W.2d 717, 726 (Minn. App. 2008). Horsman has not demonstrated that his right to prompt justice warrants relieving him of his mandatory CDL disqualification.

Affirmed.

[4] "For purposes of a vagueness analysis, 'quasi-criminal' statutes are tantamount to criminal ones." *Dunham*, 708 N.W.2d at 568. Horsman does not contend that Minn. Stat. § 171.165 is quasi-criminal, and it is readily distinguishable from the harassment-restraining-order statute held to be so in *Dunham*.