

2013 WL 6046037

Only the Westlaw citation is currently available.

THIS IS AN UNREPORTED PANEL DECISION OF THE **COMMONWEALTH** COURT. AS SUCH, IT MAY BE CITED FOR ITS PERSUASIVE VALUE, BUT NOT AS BINDING PRECEDENT. SEE SECTION 414 OF THE **COMMONWEALTH** COURT'S INTERNAL OPERATING PROCEDURES.

Commonwealth Court of **Pennsylvania**.

Clinton Rhea **YONCE**

v.

COMMONWEALTH of **Pennsylvania**,
DEPARTMENT OF **TRANSPORTATION**,
BUREAU OF DRIVER LICENSING, Appellant.

No. 296 C.D. **2013**. | Submitted
Sept. 13, **2013**. | Decided Nov. 13, **2013**.

BEFORE: **LEADBETTER**, Judge, and **BROBSON**, Judge,
and **JAMES GARDNER COLINS**, Senior Judge.

MEMORANDUM OPINION

LEADBETTER, Judge.

*1 Department of **Transportation**, **Bureau** of **Driver Licensing** (**Bureau**) appeals from the order of the Court of Common Pleas of Lancaster County which sustained the appeal of Clinton Rhea **Yonce** from the 60-day disqualification of his Commercial **Driver's License** (CDL). After review, we reverse.

On September 10, 2012, **Yonce** received a citation for speeding while operating a commercial motor vehicle in Massachusetts, for which he was subsequently convicted. After the **Bureau** received a report of **Yonce's** conviction, he was sent a notice of disqualification dated October 18, 2012, informing him that his 60-day disqualification under Section 1611(g) of the Vehicle Code, 75 Pa.C.S. § 1611(g), would take effect November 22, 2012. **Yonce** appealed the disqualification to the trial court.

Before the trial court, the **Bureau** offered into evidence without objection a packet of documents containing a certification page, a copy of the notice of disqualification,

a copy of the “out of state conviction list,” a “traffic safety inquiry,” a “CDL holder date span inquiry list,” a certification statement, and **Yonce's** certified driving history.¹ The “traffic safety inquiry” document indicated that **Yonce** was convicted on September 20, 2012, of “ACD: S92 Speeding Lim/Act req,” and that the violation occurred in a “CMV,” a commercial motor vehicle.² According to his certified driving history, this was the second serious traffic offense within a three-year period. A similar S92 Speeding conviction in Maine occurred on April 17, 2012.

Yonce testified that he was speeding on the date in question, but asked for leniency from the court, stating that his CDL was his only form of income and that, “I just really can't lose my license.” Notes of Testimony (NT.) at 12–13; Reproduced Record (R.R.) at 21a–22a. Despite noting that the Vehicle Code does not allow for discretion in shortening disqualifications, and that according to his certified driver's record **Yonce** had a number of traffic violations, which included the out-of-state traffic violation in Maine, the trial court sustained **Yonce's** appeal and rescinded the **Bureau's** suspension. This appeal followed.

The **Bureau's** sole issue on appeal is whether the trial court erred by waiving **Yonce's** statutorily mandated 60-day disqualification when it sustained his appeal. The **Bureau** avers that under Section 1611(h) of the Vehicle Code, 75 Pa.C.S. § 1611(h), it is required to treat out-of-state traffic violations by a CDL holder as having occurred in **Pennsylvania**. When the **Bureau** received the report from Massachusetts regarding **Yonce's** speeding conviction, which was his second serious traffic offense, it was required to impose a 60-day disqualification of **Yonce's** commercial operating privilege under Section 1611(g). This section, the **Bureau** contends, is mandatory and does not allow either it or the trial court any discretion. The **Bureau** submits that other than ruling on a challenge to the validity of the out-of-state convictions or whether or not the **Bureau** had acted in accordance with the law, the trial court was not free to modify the disqualification based on its determination that **Yonce** somehow deserved “a break.” N.T. at 15, R.R. at 24a. To do so, the **Bureau** argues, “infringes upon the discretion vested in the Secretary [of **Transportation**] and amounts to a manifest abuse of discretion....” *Dep't of Transp., Bureau of Traffic Safety v. McCartney*, 279 A.2d 77, 80 (Pa.Cmwth.1971). As **Yonce** neither challenged the out-of-state convictions nor asserted that the **Bureau** did not comply with the law, the **Bureau** asserts that his appeal should have been dismissed. We agree.

*2 As the party with the burden of proof, the **Bureau** can establish a *prima facie* case for disqualification by presenting a receipt of a report of an out-of-state conviction to the trial court. *Glidden v. Dep't of Transp., Bureau of Driver Licensing*, 962 A.2d 9, 12 (Pa.Cmwlth.2008). The **Bureau** must then show that the conviction is substantially similar to the proscribed offense in **Pennsylvania** and further, that the out-of-state conviction requires a disqualification under **Pennsylvania** law. *Taddei v. Dep't of Transp., Bureau of Driver Licensing*, 982 A.2d 1249, 1252 (Pa.Cmwlth.2009); *Aten v. Dep't of Transp., Bureau of Driver Licensing*, 649 A.2d 732, 735 (Pa.Cmwlth.1994). Once the **Bureau** has established a *prima facie* case, the burden shifts to the licensee to prove by clear and convincing evidence that he was not convicted of the offense and that the record is erroneous. *Taddei; Glidden*.

Section 1611, titled "Disqualification," states in pertinent part:

(g) Disqualification for serious traffic offenses.—The department shall disqualify any person from driving a commercial motor vehicle for a period of 60 days if convicted of two serious traffic violations ... arising from separate and distinct incidents occurring within a three-year period. A violation will only be considered a serious traffic violation for purposes of this subsection where:

(1) the person was a commercial **driver's license** holder at the time of the violation, and conviction of the violation results in a revocation, cancellation or suspension of the person's operating privileges for noncommercial motor vehicles; or

(2) the person was operating a commercial motor vehicle at the time of the violation.

(h) Conviction in Federal court or another state.—For purposes of the provisions of this section, a copy of a report of conviction or a copy of a report of administrative adjudication from a Federal court or another state for an offense similar to those offenses which would result in disqualification in this section shall be treated by the department as if the conviction had occurred in this **Commonwealth**....

75 Pa.C.S. § 1611(g) and (h).

Here, the **Bureau** presented the certified out-of-state conviction showing that **Yonce**, while driving a commercial vehicle in Massachusetts, was convicted of driving 67 mph in a 50 mph zone. Under the AAMVA Code Dictionary, the conviction was identified as an S92 violation, which translates into an offense under Section 3362 of the Vehicle Code, 75 Pa.C.S. § 3362. **Yonce** did not challenge the Massachusetts conviction, admitting that, "I know I did wrong, you know." N.T. at 12; R.R. at 21a. Nor did **Yonce** argue that the **Bureau** improperly imposed the 60-day disqualification of his CDL, but instead offered the explanation that he was starting his own business and was unfamiliar with all of the requirements of the Vehicle Code and that he had had a "rough" year. *Id.* at 13; R.R. at 22a. While noting the **Bureau's** *prima facie* evidence, the trial court stated, "[f]or today, as I said, I'm going to cut you a break. I'm going to sustain your appeal. I'm going to rescind this suspension." *Id.* at 18; R.R. at 27a. The trial court further stated to **Yonce**, however, if he committed a third offense, "it will be considered a third serious violation and it will result in a 120-day suspension, and you will have almost no basis to appeal because now you have been educated by me—[.]" *Id.* at 15; R.R. at 24a.

*3 The evidence submitted by the **Bureau** established that **Yonce** was convicted of driving in excess of the speed limit while operating a commercial vehicle in Massachusetts and that such a violation is akin to a violation of 75 Pa.C.S. § 3362, relating to maximum speed limits. The **Bureau** further established that this violation requires it to disqualify **Yonce's** CDL for a period of 60-days under 75 Pa.C.S. § 1611(g). Having established a *prima facie* case for disqualification, and with no testimony or evidence to rebut the **Bureau's** evidence other than his plea for leniency, the trial court was bound to uphold the law and dismiss **Yonce's** appeal.³

Accordingly, we reverse.

ORDER

AND NOW, this 13th day of November, 2013, the order of the Court of Common Pleas of Lancaster County in the above-captioned matter is hereby REVERSED and the license disqualification issued by the Department of **Transportation** is hereby reinstated.

Footnotes

- 1 Collectively, **Commonwealth** Exhibit 1.
- 2 ACD stands for the American Association of Motor Vehicle Administrators (AAMVA) Conviction/Withdrawal Code Dictionary, which was “developed to assist states in exchanging conviction and withdrawal information between licensing authorities.” *Hyer v. Dep’t of Transp., Bureau of Driver Licensing*, 957 A.2d 807, 810 (Pa.Cmwlth.2008). The Code Dictionary is used by many states, including **Pennsylvania**, “to determine the comparability of out-of-state offenses with in-state offenses, and its primary function is to enable the Commercial **Drivers’ License** Information System (CDLIS) to exchange convictions and withdrawals. It is an interpretive tool for states involved in the **Driver License** Compact of 1961, 75 Pa.C.S. § 1581, to ‘translate’ the nature of a conviction reported by a sister state.” *Id.* According to the **Bureau**, the code, “S92” refers to a violation for “Speeding—Speed limit and actual speed (detail required).” See Appellant’s Brief at 13, fn.3. This code violation is similar to a violation in **Pennsylvania** under Section 3362, 75 Pa.C.S. § 3362 Maximum speed limits.
- 3 See *Banks v. Dep’t of Transp., Bureau of Motor Vehicles*, 856 A.2d 294, 297 (Pa.Cmwlth.2004) (three-month suspension was mandatory and trial court had no discretion to consider the hardship and other equitable factors involved); *Aten v. Dep’t of Transp., Bureau of Driver Licensing*, 649 A.2d 732, 736 (Pa.Cmwlth.1994) (licensee having been convicted of the motor vehicle offense charged, the courts may not examine circumstances of the underlying conviction).