

00-169-CD
THOMAS J. SPINGOLA, JR. -vs- COMMONWEALTH OF PENNSYLVANIA

FILED

JUN 29 2000

William A. Shaw
Prothonotary

PETER F. SMITH
ATTORNEY

30 SOUTH SECOND STREET
P.O. BOX 130
CLEARFIELD, PA. 16830

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icc CA
icc atty Smith

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

THOMAS J. SPINGOLA, JR.,
Petitioner

vs.

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,
Respondent

No. ~~29~~00-769. CO

TYPE OF CASE:
Appeal

TYPE OF PLEADING:
Petition for Review of DOT
Order Suspending Operating
Privilege

FILED ON-BEHALF OF:
Petitioner

**ATTORNEY OF RECORD FOR THIS
PARTY:**

Peter F. Smith, Esquire
Supreme Court I.D. No. 34291
30 South Second Street
P.O. Box 130
Clearfield, PA 16830
(814) 765-5595

FILED

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William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

THOMAS J. SPINGOLA, JR., :
Petitioner :
vs. : No. 2000-
COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF TRANSPORTATION, :
Respondent :

***PETITION FOR REVIEW OF ORDER OF
DEPARTMENT OF TRANSPORTATION
SUSPENDING OPERATING PRIVILEGES***

COMES NOW, Thomas J. Spingola, Jr., the Petitioner, by his attorney, Peter F. Smith, who pursuant to 75 Pa. C.S.A. §1550 respectfully petitions this Court for review of an order of the Department of Transportation suspending his operating privileges and in support thereof avers:

1. The Petitioner is Thomas J. Spingola, Jr., who is an adult residing at 511 Sheridan Drive, Clearfield, Pennsylvania, 16830.

2. Petitioner currently possess a valid Commercial Motor Vehicle license issued by the Pennsylvania Department of Transportation, license number 06032863 issued on June 8, 2000.

3. Petitioner's CMV license has not been revoke, canceled or suspended.

4. By letter dated June 15, 2000, the Commonwealth of Pennsylvania, Department of Transportation notified the Petitioner that his Commercial Motor Vehicle License had been suspended for a period of 60 days commencing on July 20, 2000, at 12:01 a.m. A

true and correct copy of said letter is attached hereto and incorporated herein as Exhibit A.

5. This suspension was imposed because of a violation which occurred in the State of Wisconsin when the trailer unit which Petitioner's tractor was pulling crossed over the center line of a marked two-lane highway.

6. This incident was beyond the Petitioner's control and occurred inadvertently because the trailer belonged to a third party and was either bent or of poor quality causing it not to trail directly behind the tractor but swing out to the side.

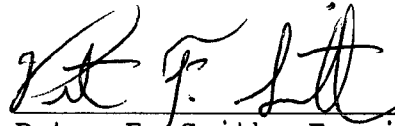
7. Being out-of-state and fully-employed elsewhere, the Petitioner simply paid the fine in order to avoid additional expense and inconvenience.

8. Petitioner also paid the fine in reliance upon a "Fact Sheet" issued by the Pennsylvania Department of Transportation which indicated that his commercial motor vehicle operators license would not be suspended for violations of Driving On Road Lane for Traffic, 77 P.S. §3309, if they occurred out of state. A true and correct copy of said Fact Sheet is attached hereto and incorporated herein by reference as Exhibit B.

9. The suspension is improper and unlawful because either the Petitioner was misinformed of the consequences of a violation of 77 P.S. §3309 by the Department of Transportation or Pennsylvania Law does not actually authorize the Department of Transportation to suspend licenses for such out-of-state violations.

WHEREFORE, Petitioner respectfully requests the Court to schedule this matter for hearing de novo pursuant to 72 Pa. C.S.S. §1550 and that the Order of the Department of Transportation be set aside.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read 'P. F. Smith', written over a horizontal line.

Peter F. Smith, Esquire
Attorney for Petitioner

Dated: 6-29-00

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
Bureau of Driver Licensing
Harrisburg, PA 17123
JUNE 15, 2000

THOMAS J SPINGOLA JR
511 SHERIDAN DR
CLEARFIELD PA 16830

001588442000010 001
06/08/2000
06032863
03/09/1928

Dear Motorist:

As a result of your conviction on 04/13/2000 of violating Section 3309 of the Vehicle Code, DRIV ON ROAD LANE FOR TRF on 03/12/2000, your privilege to drive a commercial motor vehicle is being disqualified for a period of 60 DAY(S) as mandated by Section 1611G of the Vehicle Code.

The effective date of disqualification is 07/20/2000, 12:01 a.m.

In order to comply with this sanction you are required to return any current driver's license, learner's permit and/or temporary driver's license (camera card) in your possession no later than the effective date listed. If you cannot comply with the requirements stated above, you are required to submit a DL16LC Form or a sworn affidavit stating that you are aware of the sanction against your driving privilege. Failure to comply with this notice shall result in this Bureau referring this matter to the Pennsylvania State Police for prosecution under SECTION 1571(a)(4) of the Vehicle Code.

Although the law mandates that your driving privilege is under suspension even if you do not surrender your license, Credit will not begin until all current driver's license product(s), the DL16LC Form, or a letter acknowledging your sanction is received in this Bureau.

WHEN THE DEPARTMENT RECEIVES YOUR LICENSE OR ACKNOWLEDGEMENT, WE WILL SEND YOU A RECEIPT. IF YOU DO NOT RECEIVE THIS RECEIPT WITHIN 15 DAYS CONTACT THE DEPARTMENT IMMEDIATELY. OTHERWISE, YOU WILL NOT BE GIVEN CREDIT TOWARD SERVING THIS SANCTION.

Please see the enclosed application for restoration fee information.

001588442000010

While your commercial driving privilege is disqualified, the Vehicle Code permits a driver to obtain a noncommercial Class C or M license, if the driver possesses the motorcycle qualification, to drive noncommercial motor vehicles. If you wish to obtain this license, please complete the enclosed application as instructed and return it to the Department.

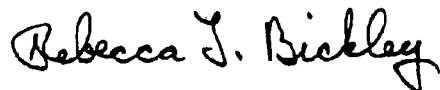
Please be aware that if you elect to obtain this noncommercial Class C or M license, you are still prohibited from operating a commercial motor vehicle. If you do so, you are subject to additional penalties, including possible lifetime disqualification of your commercial driving privilege.

You have the right to appeal the Department's action to the Court of Common Pleas (Civil Division) within 30 days of the mail date (JUNE 15, 2000) of this notice. You must still send in your license before the effective date of disqualification unless you appear in person before a Judge and receive an order permitting you to continue to drive. **PLEASE NOTE** that this Civil Appeal is in addition to any appeal you have to file from the criminal conviction.

AFTER THE APPEAL HAS BEEN FILED IN THE COUNTY COURT, A TIME-STAMPED CERTIFIED COPY OF THE APPEAL MUST BE SENT BY CERTIFIED MAIL TO:

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION
OFFICE OF CHIEF COUNSEL
THIRD FLOOR, RIVERFRONT OFFICE CENTER
HARRISBURG, PA. 17104

Sincerely,



Rebecca L. Bickley, Director
Bureau of Driver Licensing

SEND FEE/LICENSE/DL-16LC/TO:
Department of Transportation
Bureau of Driver Licensing
P.O. Box 68693
Harrisburg, PA 17106-8693

INFORMATION (7:00 AM TO 8:00 PM)
IN STATE 1-800-932-4600
OUT-OF-STATE 717-391-6190
TDD IN STATE 1-800-228-0676
TDD OUT-OF-STATE 717-391-6191

COMMERCIAL DRIVERS: DISQUALIFICATIONS AND TRAFFIC OFFENSES FACT SHEET

Q: What is a disqualification?

A: A disqualification is the temporary or permanent withdrawal of a person's privilege to operate a commercial motor vehicle (CMV).

Q: How long can a disqualification last?

A: A disqualification can be for a minimum of 60 days or for a lifetime.

Q: How does a Commercial Driver become disqualified?

A: A disqualification can result from either an accumulation of certain offenses defined as **SERIOUS TRAFFIC OFFENSES** or as a result of a single conviction for a **MAJOR OFFENSE** that occurs while the driver is operating a CMV or is transporting hazardous materials that is required to placarded.

Q: What is a serious traffic offense?

A: A serious traffic offense is a violation of the Vehicle Code that may result in the disqualification of your privilege to drive a CMV. If you are convicted of 2 serious traffic offenses within a 3 year period, you will be disqualified from driving a CMV for 60 days. If you are convicted of 3 serious traffic offenses within a 3 year period, you will be disqualified from driving a CMV for 120 days.

Serious Traffic Offenses are listed below with the appropriate Section of the Vehicle Code:

DESCRIPTION	SECTION
Improper passing on the right	3304 **
Improper passing on the left	3305 **
Improper passing on a hill	3306(1)(1) **
Improper passing at a railroad crossing or intersection	3306(a)(2) **
Improper passing at a bridge or tunnel	3306(1)(3) **
Driving roadways laned for traffic	3309
Following too closely	3310 **
Failure to yield in construction and maintenance areas	3326
Exceeding maximum speed limit 15 mph or more	3362 **
Exceeding special speed limit for trucks on downgrades	3365(c) **
Reckless driving	3736 ***

****** These offenses will also result in points being assessed to your driving record if committed in Pennsylvania.

******* This violation will also result in the suspension of your driving privilege if committed in Pennsylvania.

Q: What is a major offense?

A: A major offense is a violation of the Vehicle Code that, upon conviction will result in the automatic disqualification of your privilege to operate a CMV. A disqualification of a major offense could be for a minimum of 6 months or for a lifetime for a single offense.

Major Offenses are listed below with the appropriate Section of the Vehicle Code:

DESCRIPTION	SECTION
Driving under the influence of alcohol or controlled substance	3731(i) **
Accidents involving death or personal injury	3742 **
Accidents involving damages to attended vehicles or property	3743 **
Accidents involving damages to unattended vehicles or property	3745 ***
Requirements for a commercial driver's license	1606(c)(1)
Driving a commercial motor vehicle without a valid CDL	1606(a)
Refusal to submit to chemical testing	1613
Any misdemeanor or felony offense in which a CMV was used involving the manufacture, distribution or dispensing of a controlled substance	
The commission of a misdemeanor or felony offense in which a court determines a CMV was essentially involved	Pennsylvania Crimes Code **

****** These offenses will also result in the suspension of your driving privilege.

******* This offense will also result in points being assessed to your driving record if committed in Pennsylvania.

Q: Can a disqualified CDL driver operate a non-commercial vehicle?

A: Yes. If a driver holds a valid CDL license or permit and is only disqualified from operating a CMV, the person is eligible to apply for a non-commercial Class C or M driver's license to drive a non-commercial motor vehicle during the period of disqualification. An application to apply for a non-commercial Class C and/or M license will be enclosed with the disqualification notice.

Q: How do I get my CDL privilege restored?

A: In addition to serving the time required for the disqualification, the person will have to pay a restoration fee to PennDOT before their CDL will be returned to them.

Q: Where do I write or call to get further information?

A: You may write to the following address:

PennDOT
P.O. 68618
Harrisburg, PA 17106-8618

OR CALL 1-800 932-4600

VERIFICATION

I, Thomas J. Spingola, Jr., Petitioner in the foregoing Appeal, hereby verify that the foregoing statements are true based upon my personal knowledge, information, and belief. This statement is made subject to the penalties of 18 Pa C.S.A. § 4904 relating to unsworn falsification to authorities.

Date: 6-29-00

Thomas J. Spingola, Jr.
Thomas J. Spingola, Jr.

A

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

THOMAS J. SPINGOLA, JR., :
Petitioner :
 : No. 00-769-CD
vs. :
 :
COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF TRANSPORTATION, :
Respondent :

ORDER

NOW THIS 30th day of June, 2000, upon consideration of the petition of Thomas J. Spingola, Jr. for review of an order of the Department of Transportation suspending his commercial motor vehicle operating privileges, a hearing *de novo* is granted to determine whether the action of the Department of Transportation in suspending Petitioner's operating privilege should be set aside.

The Clearfield County Court Administrator shall schedule this matter for the first available date open for license suspension hearings and shall further notify the parties of said date.

The Petitioner is directed to immediately serve a Notice of Appeal, copy of the Petition for review and Scheduling Order on the Department of Transportation at the address shown in the Department's Notice of Entry of Order, by certified mail, return receipt requested.

This appeal shall act as a supercedas of the Department's suspension order.

BY THE COURT,

FILED

JUN 30 2000

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William A. Shaw
Prothonotary

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Copy to C/A

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION


THOMAS J. SPINGOLA, JR.,	:	
Petitioner	:	
	:	
	:	No. 00-769-CD
vs.	:	
	:	
COMMONWEALTH OF PENNSYLVANIA	:	
DEPARTMENT OF TRANSPORTATION,	:	
Respondent	:	

CERTIFICATE OF SERVICE

I, Peter F. Smith, attorney for Petitioner, THOMAS J. SPINGOLA, JR., in the above captioned matter hereby certify that I sent by Certified Mail, Petitioner's Appeal and Order to the Respondent at the following address:

Pennsylvania Department of Transportation
Office of Chief Counsel
Third Floor, Riverfront Office Center
Harrisburg, PA 17104

Date: July 6, 2000


Peter F. Smith, Esquire
Attorney for Petitioner

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JUL 06 2000

William A. Shaw
Prothonotary

FILED ^{no cc}
JUL 06 2000

William A. Shaw
Prothonotary

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

THOMAS J. SPINGOLA, JR.,
Petitioner

vs.

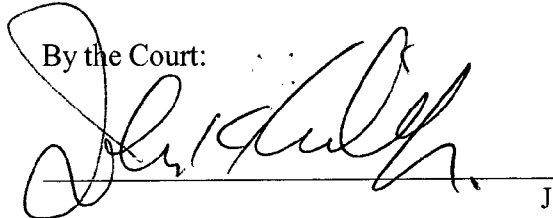
No. 2000-769-CD

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,
Respondent

ORDER OF COURT

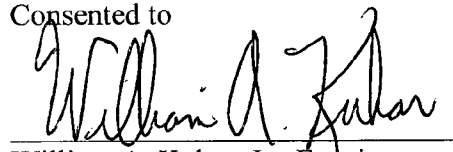
AND NOW, to wit: this 28 day of June, 2001, this appeal by the petitioner, Thomas J. Spingola, Jr., from a June 15, 2000 order of the Department of Transportation for the disqualification of his privilege to operate commercial motor vehicles for a period of 60 days pursuant to Section 1611(g) of the Vehicle Code is, with the consent of the Department of Transportation, remanded to the Department to rescind the appealed 60-day disqualification and to delete the reported April 13, 2000 conviction for violating Section 346.13(3) of the Wisconsin Statutes on March 12, 2000 from the petitioner's driving record. A violation of Section 346.13(3) of the Wisconsin Statutes does not constitute an "improper or erratic lane change", and hence does not constitute a "serious traffic violation" for the purpose of Section 1611(g) of the Vehicle Code. Therefore, the petitioner had not been convicted of committing two "serious traffic violations", while operating a commercial motor vehicle, within a three-year period.

By the Court:



J.

Consented to



William A. Kuhar, Jr., Esquire
Attorney for the Department of Transportation

FILED

JUN 25 2001

William A. Shaw
Prothonotary

FILED

JUN 25 2001

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William A. Shaw
Prothonotary
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