

**IN THE COURT OF APPEALS OF IOWA**

No. 2-750 / 12-0344  
Filed October 17, 2012

**BRANDON DEAN WATSON,**  
Petitioner-Appellant,

**vs.**

**IOWA DEPARTMENT OF TRANSPORTATION,  
MOTOR VEHICLE DIVISION,**  
Respondent-Appellee.

---

Appeal from the Iowa District Court for Polk County, Donna L. Paulsen,  
Judge.

The petitioner appeals the district court ruling affirming the one-year  
disqualification of his commercial driver's license. **AFFIRMED.**

Billy J. Mallory of Brick Gentry, P.C., West Des Moines, for appellant.

Thomas J. Miller, Attorney General, and Michelle R. Linkvis, Assistant  
Attorney General, for appellee.

Considered by Vogel, P.J., and Danilson and Mullins, JJ.

**MULLINS, J.**

Appellant, Brandon Dean Watson, appeals the district court ruling affirming the one-year disqualification of his commercial driver's license (CDL) for operating a commercial motor vehicle with a blood alcohol concentration above the legal limit of 0.04, in violation of Iowa Code section 321.208(1)(a) (2009). For the reasons stated below, we find the margin of error does not apply in the CDL context and affirm the district court's decision.

**I. BACKGROUND AND PROCEEDINGS.**

The facts related to this appeal are not in dispute. On October 22, 2010, Watson was driving a commercial motor vehicle in Monroe County, Iowa. An Iowa State trooper initiated a traffic stop of Watson's vehicle. With Watson's consent, the trooper obtained a sample of Watson's breath using a DATAMASTER unit. The test results indicated Watson had a blood alcohol concentration of .041, which is in excess of the legal limit for drivers operating commercial vehicles under Iowa Code section 321.208. Subsequently, Watson was issued a "Request and Notice" form and a "Notice of Disqualification" of his CDL for one year. Watson appealed the decision. An administrative law judge (ALJ) upheld the disqualification. On further review, a reviewing officer upheld the ALJ's decision.

Watson then filed a petition for judicial review. The district court held a hearing and during the pendency of that action the parties discovered the transcript from the ALJ hearing was missing. The district court remanded the case back to the agency and a different ALJ conducted a second hearing. The

ALJ upheld Watson's disqualification. A reviewing officer affirmed the ALJ's decision upon subsequent review. Watson filed a second petition for judicial review. On February 9, 2012, the district court affirmed the reviewing officer's decision to not take into consideration the margin of error and to disqualify Watson's CDL for one year. This appeal followed.

## II. SCOPE OF REVIEW.

Iowa Code chapter 17A governs judicial review of the Iowa Department of Transportation's (IDOT's) CDL disqualifications. *Voss v. Iowa Dep't of Transp.*, 621 N.W.2d 208, 210 (Iowa 2001). The district court reviews for correction of errors at law. *Ludtke v. Iowa Dep't of Transp.*, 646 N.W.2d 62, 64 (Iowa 2002). On appeal, we apply the standards of Iowa Code section 17A.19 to determine whether our conclusions are the same as those reached by the district court. *Wieslander v. Iowa Dep't of Transp.*, 596 N.W.2d 516, 520 (Iowa 1999).

Because this case involves an agency's interpretation of several statutes we will reverse if "substantial rights . . . have been prejudiced because the agency action is . . . [b]ased upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency." Iowa Code § 17A.19(10)(c). We need not give deference to the IDOT's interpretation as we find the agency has not been clearly vested with the discretion to interpret the statutes at issue in this case. *Welch v. Iowa Dep't of Transp.*, 801 N.W.2d 590, 594 (Iowa 2011).

### III. MARGIN OF ERROR.

Watson argues there was insubstantial evidence to support the disqualification of his CDL because the agency failed to account for the DATAMASTER's margin of error, which the parties agree is 0.004. If the margin of error was considered, Watson's alcohol concentration which tested at 0.041 could have been as low as 0.037 or as high as 0.045. Watson's CDL was disqualified under Iowa Code section 321.208(1)(a), which prohibits a person from operating a commercial motor vehicle while having an alcohol concentration of 0.04 or more. Similar language is found in Iowa Code section 321.208(12)(a), which addresses both refusal to submit to chemical testing and submission to chemical testing showing an alcohol concentration of 0.04 or more while operating a commercial motor vehicle. Neither of these provisions of the Iowa Code mention applying the margin of error to the test results. Both provisions do, however, make reference to Iowa Code section 321J.1, which defines "alcohol concentration" as it relates to blood, breath, and urine but fails to make any reference to application of a test's margin of error to the test results.

A margin-of-error provision is included in Iowa Code section 321J.12(6).

The relevant language reads:

The results of a chemical test may not be used as the basis for a revocation of a person's driver's license or nonresident operating privilege if the alcohol or drug concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the chemical test is not equal to or in excess of the level prohibited by section 321J.2 or 321J.2A.

Iowa Code § 321J.12(6). This provision makes no mention of section 321.208, under which Watson's CDL was disqualified. The only sections referenced in

section 321J.12(6) are sections 321J.2 and 321J.2A. One defines the crime of operating a motor vehicle while having an alcohol concentration of .08 or more, and the other provides for revoking the operating privileges of a person under the age of twenty-one who operates a motor vehicle while having an alcohol concentration of .02 or more. Iowa Code §§ 321J.2, 321J.2A. Both of these sections regulate the amount of alcohol a driver is legally allowed to have in his or her system while operating a noncommercial motor vehicle with a standard driver's license and do not mention commercial vehicles or CDLs.

Watson argues the entirety of Iowa Code chapter 321J, including the margin of error provision contained in section 321J.12, applies to CDL disqualifications under section 321.208 because sections 321.208(1)(a) and 321.208(12)(a) reference 321J.1. Accordingly, Watson would have us apply the margin of error provision in the CDL context because section 321J.12 requires the court to apply the margin of error test when determining whether to revoke a driver's license in the noncommercial context.

Iowa Code section 321.208(1) and (12), under which Watson's CDL was disqualified, only references 321J.1, the definition section. Legislative intent is determined by both omission and inclusion. *Wiebenga v. Iowa Dep't of Transp.*, 530 N.W.2d 732, 735 (Iowa 1995). "The express mention of certain sections implies the exclusion of others." *Id.* In *Wiebenga*, the Iowa Supreme Court held that although blood alcohol test results were inadmissible in criminal proceedings, the results could still be used as a basis to disqualify a commercial driver's license. 530 N.W.2d at 734. In that case, the defendant was arrested for

operating while intoxicated pursuant to Iowa Code section 321J.2, and his CDL was disqualified pursuant to section 321.208. *Id.* at 733. The district court dismissed the criminal operating while intoxicated charge because the arresting officer did not have reasonable grounds to believe that the defendant was in violation of section 321J.2. *Id.* The defendant then attempted to reopen the IDOT hearing on the revocation of his CDL under Iowa Code section 321J.13(4) (1993),<sup>1</sup> which allowed a person to reopen a department hearing on revocation of a motor vehicle license when the criminal action resulted in a decision that the officer did not have reasonable grounds to believe that a violation had occurred. *Id.* at 734.

The supreme court held the defendant could not have his revocation hearing reopened because section 321J.13(4) specifically mentioned only a select few situations in which the proceedings could be reopened and referred only to motor vehicle licenses, not CDL disqualifications under section 321.208. *Id.* at 735. The supreme court decided that the legislature intended for the reopening of driver's license revocation hearings under section 321J.13(4) not to apply in the CDL context. *Id.* The court concluded the legislature demonstrated its intent that CDL revocations could not be stayed under section 321J.13(4) when it omitted section 321.208 from section 321J.13(4). *Id.*

It is also clear that persons who operate commercial motor vehicles are held to a higher standard than persons operating personal vehicles. *Id.* at 735. "Stricter requirements are understandable because persons holding a

---

<sup>1</sup> In 1997, the legislature struck subsection 4 of section 321J.13. 1997 Iowa Acts ch. 104, § 31.

commercial license drive bigger vehicles and are entrusted with important tasks such as transporting large numbers of persons and hazardous wastes.” *Id.*

The Iowa Supreme Court has directly addressed whether the margin-of-error provision should apply to statutes where it is not mentioned. In *State v. Guzman-Juarez*, 591 N.W.2d 1 (Iowa 1999), the Court held that the trial court was not required to consider the margin of error inherent in a breath test machine when determining a defendant’s alcohol concentration in order to apply the statute precluding a deferred judgment. The court stated:

In construing statutes, we search for the legislature’s intent as evidenced by what the legislature said, rather than what it might have said. In addition, “when the text of a statute is plain and its meaning clear, the court should not search for a meaning beyond the express terms of the statute.” Applying these rules here, we must conclude that the legislature made no provision that the test results could or should be reduced by the margin of error. The statute is absolute in its terms; it focuses on the “results of an analysis” not the results as modified by the margin of error. To adopt the defendant’s interpretation of this statute would be to read something into the law that is not apparent from the words chosen by the legislature. This we cannot do.

*Guzman-Juarez*, 591 N.W.2d at 2 (citations omitted).

Iowa Code section 321.208(1) and (12) expressly include only section 321J.1, which does not have a margin-of-error provision. If the legislature had intended for the margin-of-error provision found in section 321J.12(6) to apply in the CDL context, it could have easily included a reference to the provisions of section 321J.12 or the entire chapter 321J in section 321.208. We find the margin-of-error provision in section 321J.12(6) does not apply in the CDL context under section 321.208. Because the legislature specifically mentioned section 321J.1 and omitted section 321J.12 and all other sections of chapter 321J, we

conclude it did not intend for the margin-of-error provision found in section 321J.12 to apply to the CDL disqualification provisions in section 321.208(1) and (12). We decline to read a margin-of-error provision into section 321.208. We find the DATAMASTER test margin-of-error provision does not apply in the context of a CDL disqualification.

We also find that Watson's attempt to distinguish the terms "alcohol concentration" and "chemical test result" is not persuasive. Although section 321.208 refers to "alcohol concentration" rather than "chemical test result," we do not find the different terms justify the application of the margin of error to "alcohol concentration." There is no reasonable statutory interpretation that would lead us to conclude the legislature's use of "alcohol concentration" instead of "chemical test result" should require the application of the margin of error.

#### **IV. CONCLUSION.**

As our interpretation of sections 321.208 and 321J.12(6) agrees with the IDOT's interpretation of those sections, we affirm the district court's ruling that the margin-of-error provision does not apply in the CDL context. As the margin of error does not apply to Watson's test results, we find substantial evidence supports the revocation of his CDL.

**AFFIRMED.**