

DISTRICT COURT, JEFFERSON COUNTY, STATE OF COLORADO Court Address: 100 Jefferson County Parkway Golden, Colorado 80401	DATE FILED: August 26, 2020 8:35 AM CLERK NUMBER: 19030060008 CASE NUMBER: 2020CA1359
Appellant: KELLY DRIVER STACKPOOL, v. Appellee: DEPARTMENT OF REVENUE, MOTOR VEHICLE DIVISION.	Δ COURT USE ONLY Δ Case No. 20CV30008 Division 9
ORDER ON APPEAL	

THIS MATTER comes before the Court on Plaintiff-Appellant Kelly Stackpool’s (“Appellant”) petition seeking review of administrative hearing ruling denying her an ignition interlock restricted driver’s license. Appellant filed her Opening Brief on May 20, 2020. Defendant-Appellee Colorado Department of Revenue, Division of Motor Vehicles (“DOR/Appellee”) filed an Answer Brief on May 27, 2020. Appellant filed a Reply Brief on June 3, 2020. The Court has reviewed the party’s briefs, the record, and all other relevant materials. The Court finds that it has jurisdiction over the parties and over the subject matter of this petition. The Court now enters this order:

I. STATEMENT OF THE CASE

On September 18, 2019, Appellant plead guilty to Driving Under the Influence- Fourth or Subsequent Offense (F4). In accordance with C.R.S. § 42-2-125(1)(c), the Dept. of Rev, Motor Vehicle Division revoked Appellant’s driver’s license for one-year, effective November 4, 2019. Appellant requested a hearing on the revocation, which was held on December 9, 2019. On December 13, 2019, the Hearing Officer issued a written ruling denying Appellant’s request to be issued an ignition interlock restricted license as opposed to her license being revoked. Appellant now appeals the Department’s decision not to issue her an ignition interlock restricted license.

II. STANDARD OF REVIEW

Judicial review of a driver's license revocation order is governed by C.R.S. § 42-2-126(9)(b). That statute provides that “a reviewing court may reverse the department's determination if it exceeded its constitutional or statutory authority, erroneously interpreted the

law, acted in an arbitrary and capricious manner, or made a determination that is unsupported by the evidence in the record.” *Baldwin v. Huber*, 223 P.3d 150, 152 (Colo. App. 2009); C.R.S. § 42-2-126(9)(b). Additionally, “a court may reverse a revocation order if a statutory violation by the Department prejudices the substantial rights of a licensee.” *Hanson v. Colorado Dep’t of Revenue, Motor Vehicle Div.*, 2012 WL 3755611, *2 (Colo. App. 2012); *see also Erbe v. Colo. Dep’t of Revenue*, 51 P.3d 1096, 1098 (Colo. App. 2002); *Nye v. Motor Vehicle Div.*, 902 P.2d 959, 961 (Colo. App. 1995). However, the credibility of witnesses, the weight to be given to the evidence, and the resolution of conflicting evidence are factual matters solely within the province of the hearing officer as trier of fact. *Baldwin*, 223 P.3d at 152.

This Court may also be required to determine the legislative intent of the General Assembly for revocation, if provisions conflict with each other. When two provisions irreconcilably conflict, “the specific provision prevails over the general provision unless the general statute was enacted more recently than the specific statute, and the legislature manifestly intends that the later-enacted general statute prevail over the earlier-enacted specific statute. *People v. Houser*, 2013 COA 11, ¶ 17, 337 P.3d 1238, 1245

III. ANALYSIS

Appellant argues that this Court should reverse the decision of DOR, because the revocation under C.R.S. § 42-2-125(c)(1) conflicts with other DUI provisions that would apply to the Appellant. Appellant states that C.R.S. § 42-2-125(c)(1) is a broad “catch-all” statute, it must yield to the three other specific statutes which allow a multiple DUI offender, such as the Appellant, the opportunity to have an interlock restricted license. Appellant maintains these provisions may conflict with C.R.S. § 42-2-125(c)(1) and the applicable narrower statutes illustrate the intent of the legislature, in allowing her to obtain an interlock restricted license.

Appellee argues that there is no conflict or ambiguity among the statutes simply because provisions have different reinstatement guidelines. Appellant used her vehicle in the commission of a felony, therefore her license was properly revoked under C.R.S. § 42-2-125(c)(1). Because the Appellant’s license was revoked for conviction of a felony in which a motor vehicle was used, per the provision, she would not be eligible for reinstatement with an ignition interlock prior to serving one-year revocation. Therefore, the Hearing Officer did not commit error when he concluded that he had no authority to determine whether the Appellant was eligible. In her reply, Appellant argues that when reading the statute, as a whole, there is a clear conflict and legislative history shows that the General Assembly did not intend to preclude felony DUI convictions from obtaining an interlock license.

This Court believes the provisions are not in conflict with each other and the legislative intent is unambiguous. While the provisions could be construed as confusing, this Court believes that there is not an “irreconcilably conflict” between C.R.S. § 42-2-125(1)(c), C.R.S. § 42-2-125(1)(b.5), § 42-2-125(1)(i), and C.R.S. § 42-2-132.5(4), that would have the specific provision prevail over the general provision. The Court does acknowledge that the issue remains unsettled, considering that there are two cases within this district, factually similar to this case, that reached opposing conclusions; *Starling v. Colo. Dep’t of Revenue*, 17CV30955 and *Kier v. Colo. Dep’t of Revenue*, 19CV31407.

In *Starling*, the Court found that C.R.S. § 42-2-125(1) was ambiguous because subsections (b.5) and (c) have varying revocation periods. Because of this ambiguity the Court relied on *People v. Houser*, which held that “when two provisions are in conflict, the specific provision prevails over the general provision.” *People v. Houser*, 337 P.3d 1238, 1245 (Colo. App. 2013). The Court held that subsection (1)(b.5) was the specific provision, because it specifically covered felony DUI under sections 42-4-1301(1)(a) or (2)(a), and therefore prevailed. According to the Court, if the Generally Assembly wanted to treat a DUI felony conviction different than a misdemeanor conviction, they would have not included it in the specific provision of (1)(b.5) but rather kept it in the catchall of (1)(c)

While this Court does agree with some of the analysis in *Starling*, we differ in some respects and ultimately come to a different conclusion. This Court believes the fact that subsection (1)(c) has been retained for decades and left unchanged, speaks to the General Assemblies intent to still apply the provision to felony DUI’s. In *Kier v. Colo. Dep’t of Revenue*, 19CV31407, the Court came to the same conclusion. In *Kier*, it is presumed the Court held that parties did not dispute that Petitioner was subject to revocation under different provisions of C.R.S. § 42-2-125. The Court held that qualifying for revocation under different provisions does not mean there is a statutory ambiguity. Here, like *Kier*, Appellant could also have had her license revoked under multiple provisions of C.R.S. § 42-2-125. Appellant disagrees, arguing that because there are limiting words in the other DUI provisions, the broad “catchall” wording of C.R.S. § 42-2-125(1)(c) illustrates that the provision was not meant for drunk driving. This Court is unpersuaded by Appellant’s argument. Again, like *Kier*, Appellant could have had her license revoked under either of C.R.S. § 42-2-125(1)(c) or of C.R.S. § 42-2-125 (1)(i). Simply because the revocation provisions have different reinstatement guidelines, does not imply that there is a statutory conflict. Appellants license was properly revoked under C.R.S. § 42-2-125(1)(c) and the Hearing Officer was correct that Appellant was not eligible for interlock-restricted license.

IV. CONCLUSION

For the reasons stated above, the Court hereby **AFFIRMS** the judgment of the hearing officer.

DONE AND SIGNED: June 26, 2020.

BY THE COURT:



RANDALL C. ARP
District Court Judge