

IOWA DEPARTMENT OF EDUCATION
(Cite as 28 D.o.E. App. Dec. 439)

<i>In re Bus Driver Authorization</i>)	
)	
Rosalee Anderson,)	
Respondent-Appellant,)	
)	DECISION
v.)	
)	
Chris Specht,)	Admin. Doc. No. 5096
Complainant-Appellees,)	
)	

STATEMENT OF THE CASE

This matter was heard telephonically on November 20, 2018, before Nicole M. Proesch, J.D., designated administrative law judge, presiding on behalf of Ryan M. Wise, Director of the Department of Education. Respondent-Appellant Rosalee Anderson ("Ms. Anderson") was represented by Attorney Tom Worley. Complainant-Appellee, Chris Specht ("Mr. Specht") appeared on his own behalf. Appearing and testifying on behalf of Ms. Anderson's employer, the West Lynn Community School District ("WLCSD") was Shawn Kreman, Superintendent of the District.

The hearing was held pursuant to agency rules found at 281 Iowa Administrative Code chapter 6. The Iowa Department of Education has jurisdiction over the hearing pursuant to Iowa Code section 321.376 and 281--IAC rule 43.24. The Complainant testified on his own behalf and presented no additional exhibits. The Respondent testified, Mr. Kreman testified, and Exhibits A-C were admitted without objection. At issue is Ms. Anderson's authorization to operate a school bus.

FINDINGS OF FACT

Rosalee Anderson has been operating a bus for the WLCSD for three years. She dually received her authorization to operate a school bus from this agency. She has had her CDL license for six or seven years. The bus Ms. Anderson operates is owned by the district. Superintendent Kreman is very satisfied with Ms. Anderson's performance as a school bus driver and would like her to continue to operate a bus for the district.

Mr. Specht is the Director of Risk Management for Avera Health. In early September he was contacted by Aletha K Erpenbach, an employee health care provider who had Ms. Anderson as a patient. Ms. Erpenbach reported that she had reviewed an electronic record authored by Ms. Anderson on September 7, 2018, which caused her concerns for Ms. Anderson's ability to operate a school bus. The note authored by Ms. Anderson indicated that Ms. Anderson "[has] had panic attacks come out of nowhere when I'm driving and [has] had to

pull over and need my Xanax." She additionally admitted to sharing a Xanax with a friend who was having severe anxiety and had run out of their medication. Both of these admissions prompted Ms. Erpenbach to terminate care for Ms. Anderson and to report this to Mr. Specht. Mr. Specht then filed this complaint with the Department. Ms. Erpenbach was concerned about Ms. Anderson's ability to drive a bus if she had to pull over and take a Xanax.

During the hearing, Ms. Anderson admitted to authoring the note to Ms. Erpenbach. She testified that the panic attacks that she referenced in the note had occurred eight years ago after the birth of her son. Ms. Anderson testified at that time she was not a bus driver and did not have her CDL license. There was no contradicting evidence presented to indicate that the events referenced in the note were recent and the note was written in the past tense. Ms. Anderson testified she is not currently taking Xanax, but has been prescribed another medication for other medical issues. She is currently under the care of Chester De Jong MD. Dr. De Jong has examined Ms. Anderson and has indicated there is no evidence that her ability to currently drive a bus is impaired. A recent random drug screen was negative for any substances, including Xanax. Ms. Anderson is subject to random drug screens at work and has had several drug screens at work which were negative. We find her testimony credible.

The issue before this agency is whether or not the authorization issued to Ms. Anderson should be revoked.

CONCLUSIONS OF LAW

All individuals who operate a school bus in this state shall hold the following: (1) an appropriate driver's license from the Iowa Department of Transportation, (2) a certification of acceptable physical examination, and (3) an authorization to operate a school bus issued by this agency. Iowa Code section 321.376(1) states in relevant part, "The Department of Education shall revoke . . . an authorization to operate a school bus to any person who, after notice and opportunity for a hearing, is determined to have committed any of the acts proscribed under section 321.375, subsection 2."

The acts proscribed in section 321.375(2) include the following: "d. the commission of . . . a public offense as defined by the Iowa criminal code, if the offense is relevant to and affects driving ability . . ." Here the issue is whether or not Ms. Anderson used a prescription drug inconsistently with her prescription while operating a school bus for the district.

The incidents that Ms. Anderson self-reported to her health care provider occurred almost eight years ago and happened before Ms. Anderson obtained her CDL and authorization to operate a school bus. There was no evidence in the record that Ms. Anderson has taken Xanax recently or while she was driving a school bus for the district. As such, we cannot conclude that Ms. Anderson committed a public offense while holding her CDL or authorization to drive a school bus. Furthermore, the incidents were so remote in time that we cannot conclude that they have any impact on her current ability to safely operate a school bus. As such, revocation is not appropriate under the circumstances.

DECISION

For the forgoing reasons, Ms. Rosalee Anderson's authorization to operate a school bus remains valid. There are no costs of this appeal to be assigned.

12-13-18
Date

Nicole M. Proesch
Nicole M. Proesch, J.D.
Administrative Law Judge

12-13-18
Date

Ryan M. Wise
Ryan M. Wise, Ed.L.D.
Director