FILED
AUG 30 1983
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

JAMES MELVIN GREER,	)	
Petitioner-Appellant,	)	Filed August 30, 1983
vs.	)	3-177 2-68949
DEPARTMENT OF TRANSPORTATION, MOTOR VEHICLE DIVISION,	)	
Respondent-Appellee.	)	

Appeal from Polk District Court, Ray A. Fenton, Judge.

Petitioner appeals the district court's decision on judicial review affirming respondent's revocation of petitioner's driver's license for 120 days on a charge of OMVUI, pursuant to Iowa Code section 321B.7(1981)(refusal to submit to chemical testing). AFFIRMED.

Robert J. Kromminga, Des Moines, for petitioner-appellant.

Richard E. Mull, Ames, for respondent-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Schlegel, and Hayden, JJ.

OXBERGER, C.J.

Petitioner appeals the district court's decision on judicial review affirming respondent's revocation of petitioner's driver's license for 120 days on a charge of OMVUI, pursuant to Iowa Code section 321B.7(1981)(refusal to submit to chemical testing). We affirm.

Testimony and evidence at the administrative hearing indicate the following facts. On May 17, 1979, petitioner was involved in a one-car accident on Interstate 80. Petitioner initially told the investigating deputy sheriff that he was not injured, but then claimed that he was injured when the deputy requested that he perform field sobriety tests. Petitioner was then transported by rescue unit to a local hospital, where he was treated and subsequently released. While at the hospital, petitioner responded to questions put to him by medical personnel, but did not respond to questioning by the deputy. The medical staff stated that petitioner was not seriously injured. The deputy then formally placed petitioner under arrest for OMVUI and read the implied consent form and explained to petitioner the consequences of refusing requested chemical tests. Petitioner did not respond to the deputy's requests for such tests or for petitioner's signature on the implied consent form. In the deputy's words, petitioner "acted. . . as though he were unconscious." The deputy did not perform the chemical tests or seek to have a licensed physician certify that petitioner was unconscious or otherwise in a condition rendering him incapable of consent or refusal, pursuant to the provisions of Iowa Code section 321B.5. Petitioner's driver's license was subsequently revoked under section 321B.7 on grounds that he had refused to submit to chemical testing. At the administrative hearing, petitioner testified that he did not remember any request for chemical testing while he was hospitalized.

The district court affirmed the revocation of petitioner's license, concluding that the arresting officer had followed correct procedure under the implied consent law, and that petitioner's inaction constituted a refusal to submit to the chemical tests. Petitioner challenges this conclusion on appeal and asserts that he received head injuries in the accident which rendered him incapable of consenting or refusing to submit to chemical tests.

I. Scope of Review

Our scope of review in the present controversy is not de novo. Iowa Code section 321B.27 provides that judicial review of decisions made by the Department of Transportation is to be "sought in accordance with the terms of the Iowa administrative procedure Act." Our review under the IAPA is limited by Iowa Code section 17A.20 to the correction of errors in law. Foods Inc. v. Iowa Civil Rights Commission, 318 N.W.2d 162, 165 (Iowa 1982). The sole issue for our determination is whether the district court correctly applied the law.

Our review function does not entail an independent determination concerning the preponderance of the evidence. Reisner v. Board of Trustees of the Fire Retirement System, 203 N.W.2d 812, 815 (Iowa 1973). Where the facts are disputed, we adopt the factual determinations made by the Department as long as they are supported by substantial evidence in the whole record. Temple v. Vermeer Mfg. Co., 285 N.W.2d 157, 160 (Iowa 1979).

II. Implied Consent

Under Iowa Code section 321B.3(1981), a peace officer is authorized, after placing a motorist under arrest, to request that the motorist submit to a specified chemical test if the officer has reasonable grounds for believing that the motorist has been driving while intoxicated. If the motorist refuses to submit to chemical testing, the director of transportation must revoke that motorist's driver's license for not less than 120 days nor more than one year. Iowa Code section 321B.7(1981). The supreme court has on several occasions reiterated its view that anything less

that unequivocal consent constitutes a refusal. See Morgan v. Iowa Department of Public Safety, 227 N.W.2d 155, 157 (Iowa 1975). More to the point, noncooperation has been held to constitute refusal. Swenumson v. Iowa Department of Public Safety, 210 N.W.2d 660, 662 (Iowa 1973), and Morgan, at 157.

In the present case there is no question but that the arresting officer had reasonable grounds to believe that petitioner had been driving on a public highway while intoxicated before he initiated the implied consent procedure. The officer testified that when he arrived at the scene of the accident and helped petitioner get out of the car, he noticed that petitioner smelled of alcohol, that petitioner's eyes were bloodshot and watery, and that petitioner was very unsteady on his feet, despite claiming to be uninjured. Petitioner's claim to have suffered injuries came only after he was asked to perform field sobriety tests. We are also in accord with the district court's conclusion that "the arresting officer followed correct procedure under the implied consent law in that he read the form to the petitioner and made proper requests and informed the petitioner of the consequences for refusing to submit to the chemical tests."

We are of the opinion that substantial evidence exists to support the district court's conclusion that petitioner's unresponsiveness to the arresting officer's requests to submit to chemical testing was an attempt on his part to avoid submission. The record indicates that petitioner's injuries were relatively minor and would not have incapacitated him. Moreover, we note that petitioner was very responsive to questions put to him by hospital personnel, conveniently slumping into catatonic stupor only in response to the deputy sheriff's requests for consent to chemical testing (yet miraculously regaining consciousness in time to respond to the hospital staff).

The findings of the hearing officer and the district court are supported by substantial evidence. We therefore affirm the revocation of petitioner's driving privileges.

AFFIRMED.