

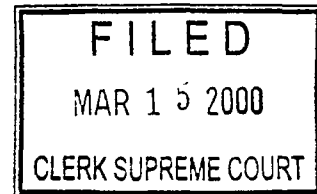
IN THE COURT OF APPEALS OF IOWA

No. 1999-391 (9-644) / 98-2229
Filed March 15, 2000

RICKY WAYNE RANEY,
Plaintiff-Appellee,

vs.

**IOWA DEPARTMENT OF
TRANSPORTATION, MOTOR
VEHICLE DIVISION,**
Defendant-Appellant.



Appeal from the Iowa District Court for Marshall County, Carl E. Peterson,
Judge.

The Iowa Department of Transportation appeals the district court's ruling
reversing the revocation of the plaintiff's driver's license. **REVERSED.**

Thomas J. Miller, Attorney General, David A. Ferree, Special Assistant
Attorney General, and Carolyn J. Olson, Assistant Attorney General, for
appellant.

Kevin M. O'Hare of Johnson, Sudenga, Latham, Peglow & O'Hare, P.L.C.,
Marshalltown, for appellee.

Considered by Huitink, P.J., and Streit and Miller, JJ.

PER CURIAM

The appellee, Ricky Raney, was found sitting on the shoulder of a rural road in Marshall County. He failed field sobriety tests and was arrested for public intoxication. A preliminary breath test showed his blood alcohol level to be 0.282. His vehicle was found abandoned about a mile away with only one set of footprints coming from the driver's side. Raney was then arrested for operating a motor vehicle while intoxicated. The department of transportation revoked Raney's driver's license under Iowa's implied consent law.

Raney challenged the revocation. The arresting officer testified he received a radio message from another officer who secured Raney's vehicle. Over Raney's hearsay objection, the arresting officer testified he was told by the other officer that only one set of footprints left the vehicle, coming from the driver's side. The presiding administrative law judge affirmed the revocation on the basis the officer had reasonable grounds to believe Raney had been operating a vehicle while intoxicated because of the footprint observations. On appeal the agency affirmed the administrative law judge's decision.

Raney filed for judicial review challenging the agency's decision. The district court reversed the agency's decision. The court determined the footprint testimony was unreliable hearsay and was insufficient to overcome Raney's claim he was not the driver. The court concluded the agency's decision was not supported by substantial evidence.

Our review is for correction of errors at law, not *de novo*. *Henkel Corp. v. Iowa Civil Rights Comm'n*, 471 N.W.2d 806, 809 (Iowa 1991). The agency – not

the court -- weighs the evidence, and we are obliged to apply those findings broadly and liberally to uphold the agency's decision. *Ward v. Iowa Dep't of Transp.*, 304 N.W.2d 236, 237 (Iowa 1981). The agency's findings are binding on appeal unless a contrary result is compelled as a matter of law. *Id.* Hearsay evidence is admissible in administrative agency proceedings and may constitute substantial evidence. *Gaskey v. Iowa Dep't of Transp.*, 537 N.W.2d 695, 698 (Iowa 1995). The district court stated, "mere hearsay which lacks reliability is not substantial evidence to overcome sworn testimony of a claimant." See *McKee v. United States*, 500 F.2d 525, 528 (Ct. Cl. 1974). The actual language of *McKee* is not "lacks reliability" but "lacks sufficient assurance of its truthfulness." *Id.* We find no sworn testimony from Raney in the record before us about whether or not he drove his car. We find nothing in the record challenging the veracity of the officer's hearsay testimony concerning the footprints found near Raney's car. We conclude substantial evidence supports the finding the arresting officer had reasonable grounds, when invoking implied consent, to believe Raney operated his vehicle while intoxicated. We therefore reverse the order of the district court and affirm the agency's revocation of Raney's driver's license.

REVERSED.