IN THE COURT OF APPEALS OF IOWA

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CLERK SUPREME COURT

No 5-606 / 95-0180

001175

STATE OF IOWA,

Appellee,

vs.

EARL F. RYAN,

Appellant

Appeal from the Iowa District Court for Black Hawk County, James D Coil, District Associate Judge.

The defendant, a third-time offender under Iowa Code section 321J 2, appeals the district court's order denying his application for a temporary restricted license

AFFIRMED.

Carter Stevens of Beecher, Rathert, Roberts, Field, Walker & Morris, P C , Waterloo, for appellant.

Thomas J Miller, Attorney General, Robert P. Ewald, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Anthony Janney, Assistant County Attorney, for appellee.

Considered by Hayden, P.J., and Cady and Huitink, JJ

HUITINK, J.

On October 10, 1994, Earl Ryan pled guilty to a charge of operating while intoxicated, third offense, in violation of Iowa Code section 321J.2 (1993). Pursuant to section 321J.4(3), the district court ordered the department of transportation to revoke Ryan's driver's license for a period of six years.

On November 15, 1994, Ryan applied for an ignition interlock device. Section 321J.4(8) provides that a person whose license has been restricted may petition to the court to obtain a temporary restricted license. In pertinent part, this section provides:

> The court shall determine if the temporary restricted license is necessary for the person to maintain the person's present employment. If the court determines that the temporary restricted license is necessary for the person to maintain the person's present employment, the court shall order the department to issue to the person a temporary restricted license conditioned upon the person's certification to the court of the installation of approved ignition interlock devices in all motor vehicles that it is necessary for the person to operate to maintain the person's present employment.

Iowa Code § 321J.4(8).

A hearing was held on the matter on December 5, 1994. Ryan testified he lived in Cedar Falls and was employed as a parts salesman by Andrew Auto Supply in Waterloo. He stated it was a distance of ten miles from his home to his employment and that in good weather he would usually ride his bicycle to work. He stated that in bad weather he would walk about a mile to catch the bus, or he could sometimes get a

ride with his brother He also testified that when he was able to drive, as a courtesy to customers, he would deliver auto parts on his way home

The district court denied Ryan's request for a temporary restricted license The court found he had failed to establish that a temporary restricted license was necessary to maintain his employment

Ryan sought a rehearing to allow him to present additional evidence concerning his job responsibilities The court granted Ryan's request for a rehearing The second hearing was held on January 5, 1995. At this hearing, Ryan presented a letter from his employer which stated it greatly missed Ryan's ability to be flexible by delivering parts on his way home. Ryan testified his work hours were from 8 a.m to 5 p m. He stated the buses did not begin to run until 8 a.m., and thus, if he would be forced to rely on the bus he would be late for work. He also admitted he would probably be able to keep his employment, even if he were not granted a temporary restricted license

The district court found that although the revocation of Ryan's license presented a hardship to him and his employer, the issuance of a temporary restricted license was not necessary for him to maintain his employment. The court denied the application for a temporary restricted license. Ryan has appealed

Ryan claims the district court erred in denying his request for a temporary restricted license He states that while it is possible for him to get to and from work without such a license, it is difficult for him to do so. He believes the district court

applied the statute too strictly and has made it virtually impossible for someone to qualify for a temporary restricted license. He claims the license is necessary for him to reasonably maintain his current form of employment

Our review in this action is at law. *State v. Shaffer*, 461 N.W.2d 329, 331 (Iowa 1990). Findings of fact in a law action are binding on us if supported by substantial evidence. Iowa R. App. P. 14(f)(1). Evidence is substantial when a reasonable mind could accept it as adequate to reach the same finding. *Shaffer*, 461 N.W.2d at 331.

A person's right to a temporary restricted license is purely statutory. *State v. West*, 446 N.W.2d 777, 778 (Iowa 1989). The supreme court has interpreted section 321J.4(8) to mean that a temporary restricted license should be issued only when such a license is necessary to enable one to keep his or her employment. *Shaffer*, 461 N.W.2d at 331.

The facts in *Shaffer* are similar to those presented in this case. The defendant there testified he had a ride back and forth to work and admitted he would not be discharged from his employment if he failed to receive a temporary restricted license. *Id.* The court concluded Shaffer had failed to establish he needed a temporary restricted license to maintain his present employment. *Id.*

Based on the evidence presented in this case, we find Ryan has failed to show a temporary restricted license is necessary to enable him to keep his employment. He is able to get to work by riding his bicycle or taking the bus. Furthermore, he admitted

it was unlikely he would lose his job if the court did not permit him to receive a temporary restricted license.

We affirm the decision of the district court. Costs of this appeal are assessed to Ryan.

AFFIRMED.