IN THE COURT OF APPEALS OF IOWA

No. 1999-59 (9-214) / 98-1606
Filed August 27, 1999

DAVID LEO JONES,
Petitioner-Appellee,

vs.

IOWA DEPARTMENT OF TRANSPORTATION, MOTOR VEHICLE DIVISION,
Respondent-Appellant.

FILED

Appeal from the Iowa District Court for Webster County, Gary L. McMinimee, Judge.

The Iowa Department of Transportation appeals from the district court decision on judicial review reversing the revocation of the petitioner's driver's license. **REVERSED.**

Thomas J. Miller, Attorney General, David A. Ferree, Special Assistant Attorney General, and Mark Hunacek, Assistant Attorney General, for appellant.

Dan T. McGrevey, Fort Dodge, for appellee.

Considered by Streit, P.J., and Mahan and Zimmer, JJ.

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MAHAN, J.

David Leo Jones was arrested for operating while intoxicated on March 15, 1998. The police officer requested field sobriety tests. The first test was the horizontal gaze nystagmus which Jones failed. Jones then refused any further field sobriety tests and admitted he was drunk.[1] The police officer invoked implied consent and asked Jones to submit to a breath test. Jones refused. The officer then advised him he could have a blood or urine test. He once again refused. The officer filled out the implied consent form indicating he had asked for breath, blood and urine. He did not clarify on the form he had asked for these in the alternative.

The Iowa Department of Transportation revoked Jones' driver's license on the basis of his test refusal. Jones requested a hearing which was granted. Jones presented evidence of a hearing loss and testified he was confused and did not understand the implied consent proceedings. He conceded, however, that he did not inform the officer he was having difficulty understanding. He did not ask any questions about the procedure, he did not ask the officer to explain or clarify and he did not ask that anything be repeated. The administrative law judge upheld the revocation. The revocation was affirmed on administrative appeal, and Jones filed a petition for judicial review. The district court found there was substantial evidence to support the findings of fact made by the agency but reversed on the ground that the

[1] The officer had read the Miranda warnings to Jones and he had signed the form.

police officer failed to properly invoke implied consent pursuant to Iowa Code section 321J.6. The Iowa Department of Transportation appeals.

I. STANDARD OF REVIEW. In reviewing a district court decision on the validity of an agency action, we decide only whether the district court has correctly applied the law. *Houlihan v. Employment Appeal Bd.*, 545 N.W.2d 863, 865 (Iowa 1996); *Henry v. Iowa Dep't of Transp.*, 426 N.W.2d 383, 385 (Iowa 1988). The district court itself acts in an appellate capacity to correct errors of law on the part of the agency. *Id.* When we review such action by the district court, we merely apply the standards of section 17A.19(8) to determine whether our conclusions are the same as those of the district court. *Id.* If the conclusions are the same, we affirm; otherwise we reverse. *Downing v. Iowa Dep't of Transp.*, 415 N.W.2d 625, 627 (Iowa 1987).

II. ADEQUACY OF IMPLIED CONSENT PROCEDURE. The district court found "there is substantial evidence to support the findings of fact by the hearing officer." The district court then proceeded to reverse the administrative decision on the grounds the implied consent procedures in this case were not consistent with Iowa Code section 321J.6. We disagree.

The administrative law judge made a finding of fact that the police officer in this case initially requested Jones submit to a breath test and only after his refusal did the officer request or offer a blood and urine test. The officer then did not modify the form to show these tests were offered in the alternative. The district court concluded there was substantial evidence in the record to support the agency findings of fact but

also concluded the form "on its face requested specimens of all three body fluids, blood, breath and urine and the statute did not authorize the officer to make such a request nor did the statute require the petitioner to give samples of all three fluids."

We conclude there is no evidence in the record to suggest the police officer requested Jones to give a sample of all three body fluids at the same time. The record is very clear that the officer first requested a sample of Jones' breath and only after this was refused did the officer make a request for blood or urine. We further conclude the purpose of the implied consent statute has not been "compromised" under the facts of this case. *State v. Lindeman,* 555 N.W.2d 693, 696 (Iowa 1996) (substantial compliance with implied consent statute will be found when purposes underlying statutory requirement "were not compromised"); *State v. Green,* 470 N.W.2d 15, 18 (Iowa 1991) (test evidence allowed in criminal case when purpose of the written request requirement is "substantially met"). The purpose of the statute is to maintain a contemporaneous record of what occurred. *Green,* 470 N.W.2d at 18. That purpose has not been compromised here. The record is clear as to what occurred. Jones should not be allowed to avoid the consequences of the law because the officer failed to note on the form that the tests were requested alternatively.

We also conclude Jones confusion and alleged failure to understand should not void the procedures in this case. *Janssen v. Sellers,* 207 N.W.2d 746, 747 (Iowa 1973). The record clearly indicates Jones did not take any action to bring his failure to understand to the attention of the officer.

We have carefully reviewed this case and conclude the decision of the district court should be reversed. The license revocation of Jones is reinstated.

REVERSED.