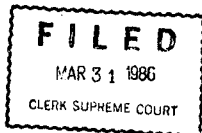


IN THE COURT OF APPEALS OF IOWA



WOODROW GRAY,)

Plaintiff-Appellee,)

vs.)

IOWA DEPARTMENT OF TRANSPORTA-)
TION,)

Defendant-Appellant.)

Filed March 31, 1986

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5-609
85-632

Appeal from the Iowa District Court for Johnson County (48728) - L. Vern Robinson, Judge.

Respondent challenges an adverse ruling by the district court that allowed retroactive application of an amendment to Iowa Code section 321B.13.
REVERSED.

Thomas J. Miller, Attorney General of Iowa, and Mark Hunacek, Assistant Attorney General, for defendant-appellant.

Philip B. Mears of Mears, Zimmerman & Mears, Iowa City, Iowa, for plaintiff-appellee.

Heard by Schlegel, P.J., Hayden, and Sackett, JJ.

Respondent challenges an adverse ruling by the district court that allowed retroactive application of an amendment to Iowa Code section 321B.13. We reverse.

Petitioner Gray was arrested for operating a motor vehicle while under the influence of alcohol on October 9, 1983. He was read the implied consent advisory in accordance with Iowa Code chapter 321B. Petitioner agreed to submit to a breath test, but after three unsuccessful attempts, the tests were stopped. The Department of Transportation (DOT) interpreted these unsuccessful attempts as a refusal to perform the tests. This determination was upheld on appeal throughout the lower tribunals and is not an issue before us today.

Petitioner's license was summarily revoked at the time of his arrest and was effective 20 days from that date. Petitioner then requested an administrative hearing to contest the validity of this revocation and to also ask for a work permit in the event the revocation was sustained. At the hearing on January 18, 1984, the hearing officer sustained the revocation and, in accordance with Iowa Code section 321B.13, determined that petitioner was ineligible for a work permit. Petitioner appealed for further review, and on August 4, 1984, the agency affirmed the hearing officer's decision.

The statute in effect at the time of the arrest and the administrative hearings, made no provision for a work permit in the case of a test refusal. See Iowa Code § 321B.13 (1983). However, this statute was amended by section 14 of chapter 1292 of the Laws of the 70th General Assembly, 1984 session. As amended, this statute, now codified as section 321B.13 (1985), provides that a person who refuses chemical testing is, in certain circumstances, eligible for a work permit. We assume, for purposes of this appeal, the effective date for this amendment was July 1, 1984.

Due to this legislative factor, the retroactive application of this amendment to petitioner's case was argued on appeal to the district court. The district court found the amended statute should be applied retroactively and ordered the DOT to consider petitioner for a work permit under its provisions.

The DOT has appealed this decision. The retroactive application of the amendment to Iowa Code section 321B.13 (1983), is the sole issue in this appeal.

When exercising the power of judicial review, the district court is functioning in an appellant capacity to correct errors at law. Iowa Code § 17A.19(8); Kohorst v. Iowa State Commerce Comm'n., 347 N.W.2d 619, 621 (Iowa 1984). Our duty is to correct errors of law made by the district court. Thomas v. William Knudson & Son, Inc., 349 N.W.2d 124, 126 (Iowa App. 1984).

The district court's decision was based upon two conclusions. First, it was determined that the statute was remedial and therefore subject to retroactive application. Second, the district court resolved that Iowa Code section 4.13 (1985) dictated retroactive application.

Contrary to the district court, we hold the issue before us is controlled by our holding in Elliot v. Iowa Dept. of Transportation, 377 N.W.2d 250, 253-54 (Iowa App. 1985). In that case we said:

However, Iowa Code section 4.1(1) provides that "[t]he repeal of a statute, after it becomes effective does not revive a statute previously repealed, nor affect any right which has accrued, any duty imposed, and penalty incurred, or any proceeding commenced under or by virtue of the statute repealed."

The incident from which stemmed Elliot's license revocation occurred on November 17, 1982. Elliot received a notice of license revocation effective December 16, 1982. Elliot's hearing before the DOT commenced on August 4, 1983. It follows, then, since the administrative proceedings were commenced before the repeal of rule 11.3(4), the repeal and amendment of Chapter 11 do not prevent the old rule from applying in Elliot's case. (Emphasis ours.)

In light of our decision in Elliot, we hold that because the administrative proceedings in this case were commenced before the amendment of Iowa Code section 321B.13 (1985), the new provisions cannot retroactively effect the legal standards applicable to petitioner's case. And, because the district court based its decision on the erroneous application of law, we must reverse its decision.

REVERSED.