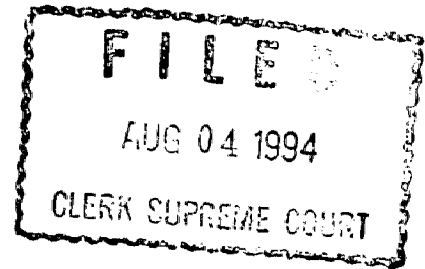


IN THE COURT OF APPEALS OF IOWA

No. 3-612 / 93-360



BRUCE C. PETTY, d/b/a/ J & R LOUNGE,

Petitioner-Appellant,

vs.

IOWA DEPARTMENT HEARING BOARD OF THE IOWA DEPARTMENT OF
COMMERCE, ALCOHOLIC BEVERAGES DIVISION,

Respondent-Appellee,

and

POLK COUNTY, IOWA,

Intervenor-Appellee.

Appeal from the Iowa District Court for Polk County,
Joel D. Novak, Judge.

Petitioner appeals a district court order upholding the
denial of his application for renewal of his liquor
license. **AFFIRMED.**

J. Keith Rigg, Des Moines, for appellant.

Bonnie J. Campbell, Attorney General, and Lynn M.
Walding, Assistant Attorney General, for
respondent-appellee.

John P. Sarcone, County Attorney, and David W. Hibbard,
Assistant County Attorney, for intervenor-appellee.

Considered by Donielson, C.J., and Habhab and Huitink,
JJ.

DONIELSON, C.J.

Bruce Petty has owned J & R Lounge for thirteen years. Dancers perform at the lounge. Prior to 1991, the lounge had not been cited for liquor violations. Petty has never been arrested.

On March 1, 1991, Petty filed an application for renewal of the lounge's liquor license. On September 10, 1991, the Polk County Board of Supervisors disapproved the application "based on criminal convictions of the bartender and a waitress." Petty appealed the decision to the hearing board. On June 1, 1992, the hearing board upheld the denial of Petty's application. The board concluded violations of state law occurred with such frequency at the lounge that Petty knew about them. Petty sought judicial review. The district court found substantial evidence supported the findings that illegal activities occurred at the lounge and Petty knew about them.

Petty appeals. We affirm the district court.

Appellant's action was properly brought under the provisions of Iowa Code section 17A.19 (1991). Our scope of review in cases arising out of the Iowa Administrative Procedure Act is limited to correcting errors of law made by the district court. Foods, Inc. v. Iowa Civil Rights Comm'n, 318 N.W.2d 162, 164-65 (Iowa 1982). The review function of the district court under section 17A.19 is to correct errors of law which are specified in section 17A.19(8). When we review decisions of the district court

which were rendered in its capacity as an appellate body under section 17A.19, the issue for our determination is whether the district court correctly applied the law. Id. at 165. In order to make that determination, we apply the standards of section 17A.19(8) to the agency action to determine whether this court's conclusions are the same as those of the district court. Jackson County Pub. Hosp. v. Public Employment Relations Bd., 280 N.W.2d 426, 429-30 (Iowa 1979). The scope of review encompasses a review of the entire record and is not limited to the agency's findings. Higgins v. Iowa Dep't of Job Serv., 350 N.W.2d 187, 191 (Iowa 1984).

Iowa Code section 17A.19(8)(f) provides in a contested case the court shall grant relief from an agency decision which is unsupported by substantial evidence made before the agency when that record is viewed as a whole. Eaton v. Iowa Dep't of Job Serv., 376 N.W.2d 915, 916-17 (Iowa App. 1985). Evidence is substantial to support an agency's decision when a reasonable person would find it adequate to reach a conclusion. Id. at 917. The question is not whether the evidence might support a different finding but whether the evidence supports the findings actually made. Henry v. Iowa Dep't of Job Serv., 391 N.W.2d 731, 734 (Iowa App. 1986). The fact two inconsistent conclusions can be drawn from the evidence does not mean one of those conclusions is unsupported by substantial evidence. Id.

The record contains substantial evidence from which the agency could find appellant's employees engaged in repeated illegal acts and appellant knew or should have known what the employees were doing. As part of an ongoing investigation, law enforcement officers went to the lounge at about 8:40 p.m. on January 30, 1991. They observed three female dancers who were improperly exposing themselves to the customers. On March 15, 1991, law enforcement officers again observed dancers improperly exposing themselves. On March 22, 1991, officers arrived at the lounge at 9:00 a.m. A waitress exposed her breasts for a fee of \$1 and three dancers were observed exposing their pubic hair and vaginas. The bartender was arrested on charges of allowing indecent exposure. A search of the premises resulted in the arrests of two female employees on drug charges. Petty was not present on these occasions, but he did go to the lounge daily. We conclude substantial evidence in the record supports the findings and conclusions of the hearing board. Therefore the district court, acting in its appellate capacity, correctly affirmed the decision of the board.

The hearing board based its decision not to renew appellant's class C liquor license on conclusions he violated Iowa Administrative Code sections 185-4.7(123) and 185-4.8(123). The board considered evidence of underage drinking and the number of police calls to the lounge, but did not base its decision on that evidence. We conclude

the decision of the hearing board was based on careful consideration of substantial evidence in the record. It was not arbitrary, capricious, or unlawful. Because our conclusions after review of the record are the same as those of the district court in its review, we determine the district court committed no errors of law. Accordingly, we affirm the district court's review affirming the hearing board's review affirming the decision of the Polk County Board of Supervisors to deny a renewal of appellant's class C liquor license. We determine any other issues the parties may have raised are either covered by this opinion or are without merit.

AFFIRMED.