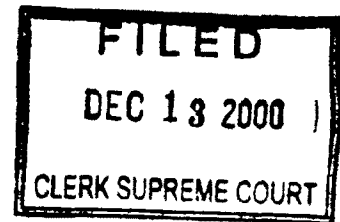


**IN THE COURT OF APPEALS OF IOWA**

No. 0-320 / 99-0928  
Filed December 13, 2000



**BRAD PETER BONNESEN,**  
Petitioner-Appellant,

vs.

**DEPARTMENT OF TRANSPORTATION  
MOTOR VEHICLE DIVISION,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Cass County, Timothy O'Grady,  
Judge.

The petitioner appeals from the district court's ruling on judicial review affirming the respondent's revocation of his driver's license for a chemical test refusal under implied consent procedure pursuant to Iowa Code chapter 321J (1997). **AFFIRMED.**

John M. Trewet of Rutherford, Trewet & Peterson, Atlantic, for appellant.

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

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

**MAHAN, J.**

The petitioner-appellant, Brad Bonnesen, appeals the district court's ruling on judicial review affirming the Iowa Department of Transportation's revocation of his driver's license for a chemical test refusal under implied consent procedure pursuant to Iowa Code section 321J.6 (1997). He claims the requirements for invoking implied consent procedure were not met because (1) there was no probable cause to arrest him for operating while intoxicated, (2) the officer invoking implied consent did not have reasonable grounds to believe the petitioner was operating a motor vehicle while intoxicated, and (3) the preliminary breath test was not valid.

**Background.** In July 1998, Bonnesen was stopped while driving his vehicle in Griswold. Iowa State Trooper Granner arrived at the scene to undertake the investigation of the stop. Granner observed a strong smell of alcohol on Bonnesen's breath and observed he had bloodshot and watery eyes. Bonnesen indicated he had consumed four to five beers. Granner indicated Bonnesen failed a series of field sobriety tests. Bonnesen claims the tests were improperly administered as allegedly shown by a videotape. Granner subsequently administered a preliminary breath test which Bonnesen failed. Bonnesen claims the preliminary breath test was improperly administered because the fifteen-minute waiting period recommended by the manual did not occur. After the test failure, Bonnesen was arrested for operating a motor vehicle while intoxicated. Implied consent procedures were invoked and Bonnesen refused chemical testing resulting in the revocation of his driver's license.

**Agency Proceedings.** Bonnesen challenged the revocation in contested case proceedings claiming Granner did not have reasonable grounds to believe Bonnesen had been operating his motor vehicle while intoxicated. The revocation was upheld throughout the administrative proceedings.

**Judicial Review.** Bonnesen petitioned for judicial review claiming the trooper “did not have reasonable grounds to believe Plaintiff was operating while intoxicated.” On April 19, 1999, the district court entered a ruling affirming the revocation. Although the court did not consider the preliminary breath test as providing reasonable grounds for meeting the reasonable grounds requirement for invoking the implied consent law, the court concluded such grounds existed on the basis of the officer’s observations of Bonnesen, the failure of field sobriety tests, and the admission he had been drinking. The court upheld the Department’s revocation of Bonnesen’s license.

**Appellate Claims.** On appeal, Bonnesen claims the requirements for invoking implied consent were not met, in that (1) the trooper did not have probable cause to arrest him, (2) the trooper did not have reasonable grounds to believe he was operating while intoxicated, (3) the preliminary breath test was invalid, and (4) Iowa Code section 321J.6 requires rescission of his license revocation. The Department responds Bonnesen did not preserve error on any claim except his reasonable-grounds claim because the other claims were not raised before this appeal.

**Analysis.** From our review of the record of the contested case proceedings and the petition for judicial review, the only reason we find cited for

the challenge of each proceeding is the trooper did not have reasonable grounds to believe Bonnesen was operating while intoxicated. In order to preserve an error, the issue must be raised before the agency. *Chauffeurs, Teamsters & Helpers, Local Union No. 238 v. Iowa Civil Rights Com'n*, 394 N.W.2d 375, 384 (Iowa 1986). Iowa Code section 17A.19(4) sets out a strict pleading standard for the preservation of issues in review of agency decisions -- each claimed error must be separately and distinctly stated. *Second Injury Fund of Iowa v. Klebs*, 539 N.W.2d 178, 180 (Iowa 1995). The Department is correct in its argument error was not preserved on Bonnesen's other claims. We do not address claims raised for the first time on appeal.

Concerning the remaining claim, Bonnesen argues there is not substantial evidence to support the determination the trooper had reasonable grounds to believe he was operating while intoxicated. Bonnesen challenges the credibility of the trooper and the reliability of the information the trooper used to form his belief. The agency, not the court, weighs the evidence and we are obliged to apply those findings broadly and liberally to uphold rather than defeat the agency decision. *Ward v. Iowa Dep't of Transp.*, 304 N.W.2d 236, 237 (Iowa 1981). The trooper smelled alcohol, saw Bonnesen's watery, bloodshot eyes, and determined he failed field sobriety tests. In addition, Bonnesen admitted drinking four or five beers. The reasonable grounds test is met when the facts and circumstances known to the officer at the time would have warranted a prudent person's belief the offense has been committed. *Pointer v. Iowa Dept. of Transp., Motor Vehicle Div.*, 546 N.W.2d 623, 625 (Iowa 1996). Substantial

evidence supports the finding the trooper had reasonable grounds to believe Bonnesen was operating while intoxicated.

**AFFIRMED.**