FILED
OCT 28 1987
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

JAMES RICHARD MEADE,

Petitioner-Appellant,

vs.

IOWA DEPARTMENT OF TRANSPORTATION, MOTOR VEHICLE DIVISION,

Respondent-Appellee.

Filed October 28, 1987

155

7-428
87-153

Appeal from the Iowa District Court for Hamilton County (23,509), Russell J. Hill, Judge.

Petitioner appeals the district court's affirmance of an Iowa Department of Transportation decision revoking his driving privileges. **AFFIRMED.**

Patrick B. Chambers, Webster City, for petitioner-appellant.

Thomas J. Miller, Attorney General of Iowa, and Mark Hunacek, Assistant Attorney General, for respondent-appellee.

Considered by Donielson, P.J., and Schlegel and Hayden, JJ. Snell, J., takes no part.

While driving his motor vehicle on the public highways, James Richard Meade was stopped for speeding. The police officer observed that Meade smelled of alcohol and his eyes were red. Two alcosensor tests were given Meade at the scene, and the officer believed Meade was unsteady when he walked from the police car to his truck. The alcosensor tests resulted in readings over .10 milligram percent. The officer took Meade to the sheriff's office, where he was administered a test on the intoxilyzer. That test indicated a blood alcohol level of .145 milligram percent. On the basis of that test, the Department of Transportation revoked Meade's privilege to operate and register motor vehicles for a period of 180 days. Meade requested an evidentiary hearing on the revocation of his operating and registration privileges. By formal hearing, petitioner, represented by counsel, submitted evidence. At the conclusion of the hearing, the hearing officer filed his ruling, sustaining the revocation. On review, the reviewing officer sustained the findings of the hearing officer. Meade filed a timely petition for judicial review. The district court affirmed the action of the agency and Meade appealed that ruling. We affirm.

Hearings on appeals of revocation resulting from test results are provided for by section 321J.12 of the Iowa Code (1987) (formerly section 321B.26 of the Iowa Code (1985)). These hearings must be in accordance with Iowa Code section 17A.18(3). McCrea v. Iowa Dep't of Transp., 336 N.W.2d 427, 428 (Iowa 1983). Noting the provisions of Iowa Code section 17A.23, the applicability of chapter 17A to the present cause is clear. See Iowa Code § 17A.23. Under these provisions, the supreme court has decided that the petitioner (Meade, in this case) must be "given an opportunity to show, in an evidentiary hearing . . ., compliance with all lawful requirements for the retention of the license,"

with the burden placed upon the petitioner to make that showing. McCrea, 336 N.W.2d at 428-29.

Our review of the agency's decision of the merits is governed by the "substantial evidence" rule of section 17A.19(8)(f): we determine if there is substantial evidence in the record as a whole to support the decision of the agency. McCrea, 336 N.W.2d at 429. We believe that there is substantial evidence to support the revocation of Meade's privileges.

Petitioner claims that there was not substantial evidence to show that his blood/alcohol level exceeded .10 milligram percent, and that he was not subject to revocation of his privileges, since his blood/alcohol level could not have been that high. As proof, he offered evidence as to the quantity of alcoholic beverage (beer) that he had consumed during the day, prior to his arrest. He offered evidence from two companions who had been with him most of the time since three o'clock p.m. that day, as to how much beer he had consumed. He also offered the evidence of an expert witness who testified that, assuming the quantity of beer testified to, Meade's blood/alcohol level could not have reached .10 milligram percent.

Other evidence in the record showed that the arresting police officer gave petitioner two tests with the portable alcosensor, and tested him with the intoxilyzer at the sheriff's office. Both of the alcosensor tests showed a blood/alcohol level above .10, and the intoxilyzer test showed a level of .145, well above the legal limit.

The hearing officer found that petitioner had failed to carry the burden of proving that he had fulfilled all the requirements to retain his license. The hearing officer did not find the petitioner's evidence credible. Also, he found that the petitioner had failed to show that the intoxilyzer was not accurate.

We believe there was substantial evidence in the record to sustain the findings of the hearing officer. Under the section 17A.19(8)(f) standards, we agree with the district court that the revocation was supported by substantial evidence, and that petitioner has failed to sustain his burden of proof.

AFFIRMED.