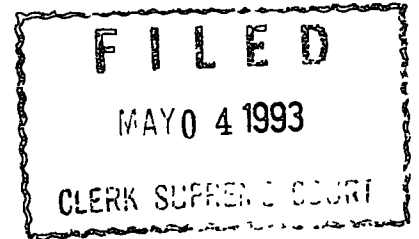


IN THE COURT OF APPEALS OF IOWA

No. 3-142 / 92-1103



LUKE PHILLIP SCHMITZ,

Appellant,

000529

vs.

IOWA DEPARTMENT OF TRANSPORTATION, MOTOR VEHICLE DIVISION.

Appellee.

Appeal from the Iowa District Court for Dubuque County,
Robert J. Curnan, Judge.

The petitioner appeals from a judgment of the district
court affirming the agency decision revoking his driver's
license on the ground of driving while intoxicated.
AFFIRMED.

Richard D. Westphal, Reynolds & Kenline, Dubuque, for
appellant.

Bonnie J. Campbell, Attorney General, David A. Ferree,
Assistant Attorney General, and Kerry Anderson, Assistant
Attorney General, for appellee.

Heard by Oxberger, C.J., and Donielson and Sackett, JJ.

OXBERGER, C.J., 000530

Luke Schmitz was arrested for operating a motor vehicle while intoxicated. His breath sample revealed a blood alcohol content of .198.

Schmitz received notice his license was revoked pursuant to Iowa Code section 321J.12 (1991). A hearing was held on November 12, 1991. At the hearing, Brian Lammers, a witness for Schmitz, testified he was driving the vehicle that night. He testified the car was driving funny when the brakes were applied and eventually stopped completely. Lammers stated Schmitz moved to the driver's side in an attempt to start the engine while he worked under the hood. Because these attempts were unsuccessful, Lammers informed Schmitz he would go and get help. Lammers testified he had a truck and jumper cables at his place of business a few miles away. Lammers stated when he returned some time later, Schmitz was gone, at which time he assumed someone had recognized Schmitz and had picked him up.

The administrative law judge affirmed the decision to suspend Schmitz' license. This decision was affirmed on appeal. Schmitz subsequently filed a petition for judicial review. The district court ruled that while its factual findings would have been different from that of the agency, reasonable minds could differ, and that as such the agency's findings were supported by substantial evidence.

Schmitz has appealed.

Scope of Review

000531

Our review of a Department of Transportation decision is governed by the Iowa Administrative Procedures Act. *Ferguson v. Iowa Dep't of Transp.*, 424 N.W.2d 464, 465 (Iowa 1988).

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. The district court itself acts in an appellate capacity to correct errors of law on the part of the agency. 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. If the conclusions are the same, we affirm; otherwise we reverse.

Henry v. Iowa Dep't of Transp., M.V.D., 426 N.W.2d 383, 385 (Iowa 1988).

Discussion

Schmitz first contends the agency's finding was not supported by substantial evidence.

Deputy Rock testified Schmitz told her, on the night of his arrest, he was the driver of the vehicle. He also admitted he had consumed alcoholic beverages prior to the time the vehicle stalled. Rock further testified Schmitz appeared confused, smelled of alcohol, and was unable to walk to the squad car without assistance. He failed the first field sobriety test but refused the remaining tests. He subsequently submitted to an intoxilyzer test which indicated a blood alcohol content of .198%. Based on this evidence, we conclude substantial evidence supported

000532

finding Schmitz was operating a vehicle in violation of Iowa Code § 321J.2 (1991).

Schmitz also contends the agency incorrectly applied the law regarding "operation" of the vehicle since he now contends he was not the driver of the vehicle before it stalled.

Deputy Rock testified Schmitz told her he was the driver of the vehicle. Throughout her entire investigation of him that evening, he not once indicated there was another driver, nor did he indicate he was waiting for Lammers to return to assist him with his vehicle.

Based on this evidence, we conclude substantial evidence supports the agency's finding Schmitz was the operator of the vehicle. Accordingly, we affirm the district court.

AFFIRMED.