FILED
DEC 21 1989
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-317 / 88-947

EDWARD ERNEST BUSING,

Appellant,

vs.

41

IOWA DEPARTMENT OF TRANSPORTATION, MOTOR VEHICLE DIVISION,

Appellee.

Appeal from the Iowa District Court for Polk County, Glenn E. Pille, Judge.

The petitioner has an eye condition requiring the use of special telescopic lenses. For several years he has driven on a restricted license pursuant to a stipulation with the DOT. After he was ticketed for two violations of his restricted license, the DOT indefinitely suspended his driver's license. Upon judicial review of an agency action, the district court upheld the indefinite suspension. **REVERSED.**

Bruce Johnson of Gamble, Riepe, Webster, Davis & Green, Des Moines, for the petitioner-appellant.

Thomas J. Miller, Attorney General, and Merrell M. Peters, Assistant Attorney General, for the respondent-appellee.

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

42

DONIELSON, J.

Edward Busing suffers from an eye disorder which limits his visual acuity in the central field of vision. To improve his vision he wears bioptic telescopic lenses, which are attached to a normal pair of eyeglasses.

In 1975 the Department of Transportation (DOT) refused to issue Busing a driver's license because of his vision problems. Busing sued the DOT, and the suit was eventually resolved by the execution of a stipulation of settlement. The settlement provided Busing would be issued a driver's license as long as he could pass the DOT's visual acuity requirements by using bioptic telescopic lenses. The restrictions on Busing's license included a limitation on night driving and a limitation to speeds of 45 mph or less.

In 1984 Busing was ticketed for violating the restriction on night driving. In 1987 he was ticketed for driving 65 mph in a 55 mph zone; this offense was also a violation of the speed restriction on his license.

Following the 1987 violation, the DOT suspended Busing's license indefinitely and announced it did not intend to permit Busing to drive again. The DOT relied on a regulation found at 761 Iowa Administrative Code 600.2(5). This regulation provides, with no exceptions, that "[t]he department shall not license any person who must wear bioptic telescopic lenses to meet the visual acuity standards required for a license." In 1987 the Iowa Supreme Court

upheld the validity of this rule against several constitutional and statutory challenges. Gooch v. Iowa Dept. of Transp., 398 N.W.2d 845 (Iowa 1987).

In stating its intention not to issue a license to Busing, the DOT took the position that the settlement resolving Busing's earlier suit was no longer effective because Busing had breached the settlement by his 1984 and 1987 violations of the restricted license. Busing challenged the DOT's indefinite suspension of his license in administrative proceedings. The indefinite suspension was upheld. Busing then challenged the administrative action by seeking judicial review. The district court upheld the indefinite suspension, and Busing has appealed.

Busing contends the district court erred by interpreting the previous stipulation of settlement so as to permit the drastic penalty of indefinite suspension for his breaches of the license restrictions. Busing also contends the imposition of an indefinite suspension was unreasonable and an abuse of discretion in light of Busing's accident-free driving record, and in the absence of any finding that he is an unsafe driver when using his telescopic lenses.

This appeal results from a contested case state agency proceeding. See Iowa Code § 17A.2(2) (1987). In "contested case" proceedings, the agency, rather than the district court, is empowered to hear evidence and make findings of fact. Iowa Code § 17A.19(7) (1987). The district court,

when exercising the power of judicial review over agency action, is functioning in an appellate capacity to correct errors at law. Iowa Code § 17A.19(8) (1987). Kohorst v. Iowa State Commerce Comm'n, 348 N.W.2d 619, 621 (Iowa 1984). We, like the district court, are bound by the agency's fact findings if those findings are supported by substantial evidence. Evidence is substantial if a reasonable person would find it adequate for reaching a decision. Peoples Memorial Hosp. v. Iowa Civil Rights Comm'n, 322 N.W.2d 87, 91 (Iowa 1982).

At issue in this case is the construction of the stipulation agreement entered into in 1981. It is not clear from the record, but it appears the State chose to enter this agreement in order to avoid continued litigation with Mr. Busing over his right to obtain a driver's license. Whatever its reasons for entering the agreement, the State drafted the document and bound itself to its conditions. The agreement sets forth the requirements Mr. Busing will have to comply with to obtain a license (i.e., passing written, driving, and vision tests and paying the license fee). It also specifies that when his license expires, Mr. Busing will be required to resubmit to the driving and vision tests. The settlement agreement also stipulates Mr. Busing's license would be subjected to three driving restrictions: no interstate driving; no driving at speeds greater than 45 miles per hour; and no night driving except

to and from work. The record supports the finding that Mr. Busing violated two of these restrictions in 1984 and 1987.

At issue, however, is what effect is to be given these violations. The State contends compliance with the requirements was a condition to Mr. Busing's continued status as a licensed driver, and once he violated them, the contractual arrangement was void. The State argues once the stipulation of settlement became void, Mr. Busing was to be treated like any other driver with his condition and he had to be denied a license. 761 Iowa Admin. Code 600.2(5). The State's argument in this regard is undercut somewhat by the fact that Mr. Busing's first violation of his restricted license occurred in 1984, yet the DOT renewed his license in 1985. Had a violation of the license restrictions truly rendered the agreement void, then it is curious that the DOT did not declare the settlement a nullity in 1984.

The State and the district court erred as a matter of law in their construction of the agreement. The agreement sets forth several driving restrictions; it does not indicate violation of these provisions will result in an indefinite suspension of Mr. Busing's license. Had the State wished to incorporate such punitive provisions into the agreement, it should have done so when it drafted it. The language in section six of the stipulation of settlement, describes the type of license (restricted) the State is willing to allow Mr. Busing to apply for and renew

in the future. It does not set forth three absolute conditions Mr. Busing must comply with to retain his license. A correct interpretation of the agreement subjects Mr. Busing to the same punishment as others who drive in violation of their restricted licenses. Iowa Code § 321.193 (1989); 761 Iowa Admin. Code 600.13(a).

The State's witness, Alton Chrystal, testified before the hearing officer that the punishment for two violations of a restricted license would be suspension of the license for a year. As Mr. Busing's license has been indefinitely suspended for more than a year, we conclude he has been adequately punished for driving in violation of his restricted license. We remand this matter to the agency, and it shall allow Mr. Busing to apply for the renewal of his license as set forth in the settlement agreement.

REVERSED.