IN THE COURT OF APPEALS OF IOWA

No. 7-421 / 96-1808

000167

ALLEN EUGENE KRATCHMER,
Appellee,

SEP 24

vs.

IOWA DEPARTMENT OF TRANSPORTATION, MOTOR VEHICLE DIVISION,
Appellant.

Appeal from the Iowa District Court for Bremer County, Paul W Riffel, Judge

The respondent appeals the district court's ruling on judicial review reversing the respondent's revocation of the petitioner's driver's license under Iowa Code chapter 321J for a chemical test failure. **REVERSED.**

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

Karen L. Thalacker of Hagemann, Goeke, Egli & Thalacker, Waverly, for appellee.

Considered by Sackett, P.J., and Streit and Vogel, JJ.

VOGEL, J.

The factual dispute presented to the Iowa Department of Transportation (DOT) was whether Allen Kratchmer's exposure to chemicals at work contaminated an intoxilyzer test so as to produce an unreliable blood alcohol test result. The legal issue, on appeal to this court, is whether the district court was correct in determining the agency's decision to revoke Kratchmer's license was not supported by substantial evidence.

Background facts and procedure. The petitioner, Allen Kratchmer, was arrested for operating a motor vehicle while intoxicated. An intoxilyzer test result showed Kratchmer's alcohol level to be .123. On the basis of the test result, Kratchmer's driver's license was revoked.

Kratchmer challenged the revocation during contested case proceedings with the respondent, the DOT. At a hearing, Kratchmer testified he consumed two sixteen-ounce beers and one twelve-ounce beer between the hours of 6:30 and 9:30 p.m. and was given the intoxilyzer test at 11:00 p.m. He claimed his work caused him to be exposed to various chemicals. A forensic scientist, Thomas Burr, testified for Kratchmer that these chemicals "would be likely to affect the results of the [intoxilyzer] test." The administrative law judge issued a ruling setting aside the revocation on the basis that Kratchmer had shown that his exposures to certain chemicals would render the test result unreliable.

On appeal, the DOT reversed the administrative law judge's decision and reinstated the revocation. The DOT concluded that Kratchmer's claims constituted mere speculation because he did not produce evidence to show the chemicals to which he had been actually exposed, what affect such exposure would have on the test result, and the amount of chemical needed to affect the test results.

On judicial review, the district court entered a ruling reversing the department's decision. The court determined that Kratchmer had overcome the presumption that the intoxilyzer results were accurate and, as such, the agency had misapplied the law.

The DOT appeals.

Scope of review. Our scope of review requires us to separate the legal issue from the factual issue. Our review is limited to correction of errors at law. *Pointer v. Iowa Dep't of Transp.*, 546 N.W.2d 623, 625 (Iowa 1996). We will uphold the agency's action if it is supported by substantial evidence. *Id.* The question is "whether the evidence supports the finding actually made," and not whether the evidence might support a different finding. *Id.* The driver has the burden to prove why his license should not be revoked. *Id.* We will not interfere unless we find, as a matter of law, the licensee met his burden. *McCrea v. Iowa Dep't of Transp.*, 336 N.W.2d 427, 429 (Iowa 1983).

"Fact findings of an agency are binding on the courts when they are supported by substantial evidence . . . the findings of an agency are binding on appeal *unless a*

contrary result is demanded as a matter of law." *CMC Real Estate v. Iowa Dep't of Transp.*, 475 N.W.2d 166, 173-74 (Iowa 1991). Thus, the district court was bound by the DOT's findings if a contrary result was not required as a matter of law.

The DOT was not obligated to believe Kratchmer's testimony as to how much alcohol he consumed, nor was the DOT required to accept as true Burr's testimony regarding the inaccuracy of the intoxilyzer machine. Burr testified other chemicals "*can* interfere with breath tests," not that they conclusively always do. *See Anson v. Iowa Dep't of Transp.*, 477 N.W.2d 695, 697 (Iowa App. 1991) ("[A] driver must do more than merely speculate something may have occurred to invalidate those results."). Burr's testimony regarding the machine accuracy also hinged on the credibility of Kratchmer's testimony; Burr's testimony was premised on Kratchmer's version of the facts and it was not incumbent on the DOT to accept or believe Kratchmer's evidence as a matter of law. *See Johnson v. Nickerson*, 542 N.W.2d 506, 513 (Iowa 1996); *State v. Frake*, 450 N.W.2d 817, 819 (Iowa 1990). The DOT chose not to accept Kratchmer's testimony as true.

Reviewing the record as a whole, we accordingly find there was substantial evidence to support the findings of the agency. The district court may not have agreed with the factual findings of the DOT, but it was error for the court to reverse, as substantial evidence supported the DOT's decision. We affirm the agency decision to revoke Kratchmer's license.

AFFIRMED.

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AFFIRMED.

Streit, J., concurs; Sackett, P.J., dissents.

SACKETT, P.J. (dissenting)

I dissent. I would affirm the trial court.