IN THE COURT OF APPEALS OF IOWA

No. 1-740 / 00-0224
Filed December 28, 2001

WAYLIN LEE BUERGER,
Petitioner-Appellant,

vs.

IOWA DEPARTMENT OF TRANSPORTATION, MOTOR VEHICLE DIVISION and IOWA DEPARTMENT OF INSPECTIONS AND APPEALS,
Respondents-Appellees.

FILED
DEC 28 2001
CLERK SUPREME COURT

Appeal from the Iowa District Court for Clayton County, John Bauercamper, Judge.

Waylin Buerger appeals from the district court's ruling which affirmed the decision of the Iowa Department of Transportation that denied as untimely his request for a hearing on the revocation of his driver's license under Iowa Code chapter 321J (1997). **AFFIRMED.**

Andrew P. Nelson of Meyer, Lorentzen & Nelson, Decorah, for appellant.

Thomas J. Miller, Attorney General, David A. Ferree, Special Assistant Attorney General, and Carolyn J. Olson Assistant Attorney General, for appellees.

Considered by Sackett, C.J., and Mahan and Hecht, JJ.

MAHAN, J.

Waylin Buerger appeals the district court ruling that upheld the decision of the Iowa Department of Transportation (DOT) that his request for a hearing on the revocation of his driver's license was untimely. He claims the DOT did not provide him with proper notice as required by Iowa Code section 321J.13(1) (1997). We affirm.

Buerger was charged with operating while intoxicated, in violation of section 321J.2, after test results showed he had a blood alcohol level of 0.163. On June 11, 1999, Buerger received notice his driver's license would be revoked for a period of 180 days. The notice stated:

> If you wish to contest the revocation, you must mail a written hearing request to the DOT within 10 days after you have received notice of revocation. If you wish to contest the disqualification you must mail a written hearing request to DOT within 30 days after you receive notice of the disqualification. You have been given a form (Form 432018) which you may use for this purpose.

Language on the form itself also stated it must be sent in within ten days after notice of revocation.

On July 6, 1999, Buerger requested a hearing on the revocation of his license. The DOT denied the request on the ground it was untimely. Buerger appealed, claiming the notice he received from the DOT did not comply with the requirements of section 321J.13(1), which in part provides:

> The form shall clearly state on its face that the form must be completed and returned within ten days of receipt or the person's right to a hearing to contest the revocation is foreclosed.

After a hearing, an administrative law judge (ALJ) found the notice sent by the DOT did not comply with section 321J.13(1) because it did not inform

Buerger he would not receive a hearing if he did not request one within ten days of the receipt of the notice of the revocation. The ALJ determined Buerger was entitled to a hearing on the merits regarding the revocation of his license.

The DOT appealed the ALJ decision. Before the appeal was considered, the Iowa Department of Inspections and Appeals held a hearing on the merits of Buerger's claims. On September 21, 1999, an ALJ denied Buerger's claims regarding the merits of the revocation of his driver's license. On September 24, 1999, the DOT concluded Buerger had received proper notice under section 321J.13(1) and his request for a hearing was untimely. In the meantime, Buerger filed an appeal of the September 21 decision. On October 29, 1999, the DOT affirmed the ALJ's decision regarding the merits of the case.

Buerger filed petitions for judicial review of the September 24 decision involving notice and the October 29 decision regarding the merits of the case. These were consolidated for consideration by the district court. The court found Buerger had received adequate notice and affirmed the agency's decision that the request for a hearing was untimely. Buerger appealed.

Our review of a DOT revocation decision is governed by chapter 17A, the Iowa Administrative Procedure Act. *Scott v. Iowa Dep't of Transp.*, 604 N.W.2d 617, 619 (Iowa 2000). We ask only whether the district court has correctly applied the law. *Bromeland v. Iowa Dep't of Transp.*, 562 N.W.2d 624, 625 (Iowa 1997). It is a court's responsibility to interpret statutes, but we give deference to an administrative agency's interpretation of a statute it administers. *Johnson v. Charles City Cmty Sch. Bd.*, 368 N.W.2d 74, 82 (Iowa 1985).

It is clear the language in the DOT notice does not exactly match the language in section 321J.13(1). The question before us, then, is whether strict compliance with the statute is required, or whether substantial compliance is adequate. In making this decision, we must consider whether the duty imposed by the statute is mandatory or directory. *Glawe v. Ohlendorf,* 547 N.W.2d 839, 843 (Iowa Ct. App. 1996). When the duty imposed by a provision is essential to effect the main purpose of a statute, the provision is mandatory. *Id.* On the other hand, when the duty imposed is not essential to the main statutory objective, the provision is directory. *Id.*

Generally, all that is required of notice is that it state with reasonable certainty the essential facts required by law. *Hunter v. Union State Bank,* 505 N.W.2d 172, 175 (Iowa 1993). Here, the notice alerted Buerger to the essential fact that if he wanted a hearing on his license revocation, it should be sent within ten days. The notice did not specifically state that if a request for a hearing was not sent within ten days, the right to a hearing would be foreclosed. However, as the State points out, this fact may be considered to logically follow from the requirement that notice be sent within ten days.

Regarding a claim of insufficient notice, the supreme court has stated:

> In short the notices the Hunters received told them the procedural and substantive "who, what, when, and where" of these rights of repurchase. As the district court correctly noted, "It is not reasonable for the Hunters, upon receipt of the notices to take no action at all and later complain they were insufficiently informed."

Id. In this regard we note there was no evidence Buerger would have acted any differently if the notice he received from DOT had included the language found in section 321J.13(1).

We find the notice given substantially complies with section 321J.13(1).[1] Substantial compliance exists when the action taken, although not literally satisfying the statutory requirement, nevertheless fulfills the minimal objectives of the statute. *Burnham v. City of West Des Moines*, 568 N.W.2d 808, 811 (Iowa 1997). We conclude Buerger's request for a hearing was untimely. We affirm the decision of the district court.

AFFIRMED.

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[1] We note that in order to avoid future problems, the DOT may want to change the language of its notice to more closely comply with section 321J.13(1).