FILED
DEC 23 1980
IOWA SUPREME COURT



IN THE COURT OF APPEALS OF IOWA

LAVERNE HOEKSTRA,

Plaintiff-Appellant,

vs.

DEPARTMENT OF TRANSPORTATION,

Defendant-Appellee.

Filed December 23, 1980

0-310
64758

Appeal from Muscatine District Court - R. K. Stohr, Judge.

Plaintiff appeals from the order on judicial review affirming defendant agency's revocation of his driver's license. AFFIRMED.

David Scieszinski, Wilton, for plaintiff-appellant.

Craig Gregersen, Assistant Attorney General, for defendant-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

PER CURIAM

Plaintiff, Laverne Hoekstra, appeals from the order on judicial review affirming defendant agency's revocation of his driver's license. We affirm.

Hoekstra was stopped by Officer Fultz who observed his erratic driving behavior. After field sobriety tests Officer Fultz arrested Hoekstra and transferred him to the public safety building. Upon arrival Officer Fultz read the implied consent form to Hoekstra, requested a urine specimen and asked Hoekstra to sign the form. Hoekstra refused both requests. At this time, Officer Fultz informed Hoekstra of his Miranda rights after which Hoekstra requested to consult with an attorney.

This case came on for hearing before the Department of Transportation after which the hearing officer ordered revocation of Hoekstra's license pursuant to 321B.7, The Code 1979. Appeal to the agency was made pursuant to Chapter 17A where the order was affirmed. Judicial review followed with the same result. Our review is limited under sections 17A.19 and 17A.20, The Code 1979. We will determine if substantial rights of the petitioner have been prejudiced by an action which is unsupported by substantial evidence in the record before the agency when the record is viewed as a whole. § 17A.19(8)(f).

Hoekstra alleged he was denied his right to counsel and this denial precludes revocation procedures. We are guided in the matter by prior decisions in State v. Vietor, 261 N.W.2d 828 (Iowa 1978) and Fuller v. Department of Transportation, 275 N.W.2d 410 (Iowa 1979). A person arrested for O.M.V.U.I. shall be afforded a right to counsel at his request. A denial of this right negates a refusal to submit to chemical testing and therefore does not activate revocation. Fuller, at 411.

Miranda rights are not applicable to the administrative revocation proceedings. Vietor at 830. An accused need not be informed of his right to counsel, but he must not be misled or denied as to that right upon his request. Id. at 831.

The basic dispute is whether Hoekstra requested counsel before, during or after the implied consent procedure took place. The hearing officer found the request was made after the refusal to give a body specimen. Although Hoekstra's testimony contradicts this finding, we do not have the hearing officer's advantage of witness observation. The testimony of Officer Fultz supports the finding, and we find this evidence to be sufficient to uphold the revocation.

AFFIRMED.