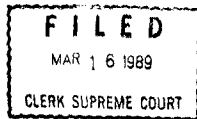


IN THE COURT OF APPEALS OF IOWA



THOMAS MERLYN KAUFFMANN,)

Petitioner-Appellee,)

vs.)

IOWA DEPARTMENT OF)

TRANSPORTATION, MOTOR)

VEHICLE DIVISION,)

Respondent-Appellant.)

8-714
88-902

92

Appeal from the Iowa District Court for Dubuque County
(No. 46550), Thomas H. Nelson, Judge.

The Iowa Department of Transportation appeals from the
district court's overturning the department's revocation of
appellee's drivers license. **REVERSED.**

Thomas J. Miller, Attorney General, and Mark Hunacek,
Assistant Attorney General, for respondent-appellant.

Thomas Merlyn Kauffmann, pro se.

Considered by Schlegel, P.J., and Hayden and Sackett,
JJ.

PER CURIAM

Appellee, Kauffmann, had an accident driving his father's vehicle on the night of September 3, 1987. A tie rod end had broken and Kauffmann collided with an oncoming car. The uncontested facts are as follows: Kauffmann had drunk one beer at approximately 7:00 P.M. before dinner and two beers after dinner and before 10:30 P.M. He started driving around 10:35 P.M. and had traveled about one-half mile when the accident occurred. After the accident and before the deputy sheriff arrived, he consumed another beer. The deputy sheriff smelled an odor of alcohol upon Kauffmann's breath and requested a preliminary breath screening test, and Kauffmann consented. The results of this breath test indicated an alcohol concentration of .10 or more. Kauffmann was arrested for operating while under the influence of an alcoholic beverage (OWI). The officers never asked him whether he had drunk any alcoholic beverages after the accident and before his arrest. Kauffmann did not inform the officers of this either.

The Iowa Department of Transportation (DOT) revoked Kauffmann's drivers license for 180 days. The district court overturned the DOT's revocation on the basis the officer's certification was hearsay and other facts were not corroborated. DOT appeals. We reverse.

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 Commission, 384 N.W.2d 619, 621 (Iowa 1984).

In this case, it makes no difference whether or not DOT's decision was based in part upon hearsay evidence. Section 17A.14(1) provides that a "finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial." This section conforms with the general rule that administrative agencies are not bound by technical rules of evidence, and that generally hearsay evidence is admissible at administrative hearings. 2 Am. Jur. 2d Administrative Law § 382 (1962). Indeed, under federal administrative law, hearsay evidence may constitute "substantial evidence." McConnell v. Iowa Dept. of Job Service, 327 N.W.2d 234, 237 (Iowa 1982).

The arresting officer was not present and did not testify at the administrative hearing. The arresting officer's certification of events pertaining to Kauffmann's arrest and accident was used as part of the evidence at the

administrative hearing. The absence of the officer does not make his report unreliable nor does it constitute inadmissible hearsay evidence. The officer's certification and report of the events surrounding Kauffmann's arrest, including the breath test, is admissible evidence before the agency.

The decision of the trial court is reversed and the decision of the DOT is reinstated and affirmed.

REVERSED.