

IN THE COURT OF APPEALS OF IOWA

No. 7-860 / 07-0285
Filed January 16, 2008

HAROLD LARIMER,
Petitioner-Appellant,

vs.

**IOWA DEPARTMENT OF TRANSPORTATION,
MOTOR VEHICLE DIVISION,**
Respondent-Appellee.

Appeal from the Iowa District Court for Story County, Carl D. Baker,
Judge.

Harold Larimer appeals from the district court's judicial review ruling affirming the Iowa Department of Transportation's revocation of Larimer's driver's license. **AFFIRMED.**

Daniel J. Gonnerman, Ames, for appellant.

Thomas J. Miller, Attorney General, and Christine Blome, Assistant
Attorney General, for appellee.

Considered by Huitink, P.J., and Miller and Eisenhauer, JJ.

EISENHAUER, J.

Harold Larimer appeals from the district court's judicial review ruling affirming the Iowa Department of Transportation's (DOT) revocation of Larimer's driver's license. On March 2, 2006, Ames police officer Blackman stopped Larimer for driving without a seat belt. Based on her observations detailed more fully below, Officer Blackman asked Larimer to complete field sobriety tests and to take a preliminary breath test and he refused both tests. Officer Blackman invoked the implied consent law. See Iowa Code § 321J.6 (2005). The DOT revoked Larimer's license for refusing to submit to chemical testing pursuant to the mandatory revocation requirement of Iowa Code section 321J.9(1).

Larimer challenged the revocation and was unsuccessful in both the agency proceedings and the district court judicial review. On appeal, Larimer contends there was a lack of substantial evidence to support the agency's finding Officer Blackman had reasonable grounds to believe Larimer was operating a motor vehicle while intoxicated. This is a fact question. See *Reed v. Iowa Dept. of Transp.*, 478 N.W.2d 844, 846 (Iowa 1991). On appeal, the DOT's factual findings are binding if supported "by substantial evidence in the record . . . when that record is viewed as a whole." Iowa Code § 17A.19(10)(f). "Evidence is substantial when a reasonable person could accept it as adequate to reach the same findings." *Reed*, 478 N.W.2d at 846. "[E]vidence is not insubstantial merely because it would have supported contrary inferences." *Missman v. Iowa Dept. of Transp.*, 653 N.W.2d 363, 367 (Iowa 2002). When utilizing this limited scope of factual review, "we ask only if the evidence submitted supports the factual findings actually made by the agency." *Reed*, 478 N.W.2d at 846.

In implied consent proceedings, Larimer, the driver, has the burden of proving Officer Blackman lacked reasonable grounds to believe he had been operating a motor vehicle while intoxicated. See *Ramsey v. Iowa Dept. of Transp.*, 576 N.W.2d 103, 106 (Iowa 1998). The reasonable grounds requirement is an objective test that “is met when the facts and circumstances known to the officer at the time the action was required would have warranted a prudent person’s belief that an offense has been committed.” *Id.* at 107.

In view of the DOT’s finding Officer Blackman had reasonable grounds, on appeal; Larimer has to prove otherwise as a matter of law. See *Reed*, 478 N.W.2d at 846. This is a heavy burden and one that is not met by Larimer here.

Officer Blackman had a reasonable basis for stopping Larimer. Larimer violated the law by driving without a seat belt which also can be an indication of impaired judgment. Additional indications of impaired judgment were Officer Blackman’s observations Larimer smelled of a strong odor of an alcoholic beverage while seated in his car and had red, watery and bloodshot eyes. Larimer fumbled with his driver’s license and had difficulty removing it from his wallet. Larimer told Officer Blackman he had been drinking at a bar in Ames and had one beer. Officer Blackman testified it was her opinion Larimer had more than one beer based on the strong odor of an alcoholic beverage coming directly from him when he was outside the car and based on her experiences where suspected drunk drivers often inaccurately report the amount of alcohol they have consumed. Additionally, Larimer leaned against his car which can be a sign of alcohol impairment. When these factors are considered together, the evidence submitted “supports the factual findings actually made” by the agency.

See *Reed*, 478 N.W.2d at 846. See also *Ramsey* 576 N.W.2d at 107 (running stop sign, bloodshot eyes and odor of alcohol provide reasonable grounds). A reasonable person aware of these facts could have believed such an offense had been committed.

We conclude the record more than adequately supports the DOT's finding Officer Blackman had reasonable grounds to believe Larimer had been operating a motor vehicle while intoxicated and the agency's action is therefore supported by substantial evidence. We affirm the district court ruling upholding the DOT's decision.

AFFIRMED.