

IN THE COURT OF APPEALS OF IOWA

No. 8-244 / 07-1266
Filed April 9, 2008

NICHOLAS EUGENE MOCHA,
Petitioner-Appellant,

vs.

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

Appeal from the Iowa District Court for Pottawattamie County, Jeffrey Larson, Judge.

Driver appeals from the district court's ruling affirming the Iowa Department of Transportation's disqualification of his commercial driver's license.

AFFIRMED.

Mark Rater, Council Bluffs, for appellant.

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

Considered by Mahan, P.J., and Eisenhauer and Baker, JJ.

BAKER, J.

Nicholas Eugene Mocha appeals from the district court's ruling affirming the Iowa Department of Transportation's (DOT) disqualification of his commercial driver's license (CDL). We hold (1) the inadmissibility of Mocha's breath alcohol content (BAC) test does not preclude the DOT's disqualification of Mocha's CDL, and (2) the rescission of the revocation of Mocha's noncommercial license did not void the final administrative decisions finding he operated a vehicle under the influence of alcohol. We therefore affirm.

I. Background and Facts

At approximately 12:47 a.m. on June 28, 2006, a Pottawattamie County Sheriff's Deputy pulled Mocha over for speeding. The officer noticed an odor of alcoholic beverage coming from the vehicle and that Mocha's speech was slurred. The officer administered field sobriety tests, and Mocha failed three of the tests. A preliminary breath-screening test indicated his BAC was over .08. He was arrested for operating a motor vehicle while under the influence of alcohol (OWI) in violation of Iowa Code section 321J.2 (2005). At the time of his arrest, Mocha was operating a noncommercial motor vehicle, but possessed a CDL. The officer arrested Mocha and took him to the Pottawattamie County Jail, where Mocha's BAC tested at .126. The arresting officer gave Mocha notice of the suspension of his noncommercial driver's license.

On September 25, 2006, the DOT notified Mocha that his privileges to operate and register motor vehicles were revoked effective October 10, 2006, until April 7, 2007. Mocha appealed, contending the arresting officer did not have reasonable grounds for arrest. An administrative law judge (ALJ) upheld the

revocation of his noncommercial license, and on October 11, 2006, the decision was affirmed on intra-agency appeal.

On October 13, 2006, the DOT notified Mocha that his privileges to operate commercial motor vehicles were disqualified effective November 17, 2006, until November 17, 2007. Mocha appealed.

On November 3, 2006, the criminal charges against Mocha were dismissed following the district court's decision to grant his motion to suppress the results of the BAC test. Mocha filed a petition to rescind the revocation. On November 9, 2006, the DOT rescinded the revocation of his noncommercial driver's license.

On December 5, 2006, a hearing was held before an ALJ on Mocha's appeal from the disqualification of his CDL privileges. The ALJ denied Mocha's appeal, and the decision was affirmed on intra-agency appeal. Mocha filed an application for judicial review. The district court upheld the ruling of the ALJ. Mocha appeals.

II. Merits

When the district court reviews agency action, it acts in an appellate capacity to correct errors of law. *Hager v. Iowa Dep't of Transp.*, 687 N.W.2d 106, 108 (Iowa Ct. App. 2004). Our review of a district court's decision rendered in its appellate capacity is governed by chapter 17A, Iowa's Administrative Procedure Act, and is confined to correction of errors of law. Iowa Code § 17A.19; *Pointer v. Iowa Dep't of Transp.*, 546 N.W.2d 623, 625 (Iowa 1996).

A. Application of *Wiebenga*

The Iowa legislature has carved out an exception to the general rule that criminal OWI cases and civil license cases are separate proceedings. See Iowa

Code § 321J.13(6); *Neidemann v. Swietzer*, 375 N.W.2d 665, 668 (Iowa 1985). Under section 321J.13(6), when a chemical test has been determined to be inadmissible in a criminal OWI proceeding, that determination is binding on the DOT, and the agency is required to rescind the revocation of a non-commercial driver's license.

That requirement, however, is not applicable to CDL proceedings. *Wiebenga v. Iowa Dep't of Transp.*, 530 N.W.2d 732, 733 (Iowa 1995). In *Wiebenga*, our supreme court held that "blood alcohol tests that are inadmissible in a criminal proceeding may nevertheless be used as a basis to revoke a commercial driver's license." *Id.* Mocha argues that the *Wiebenga* holding is inapplicable to this case because the facts are distinguishable.

We are not persuaded by Mocha's argument. Commercial drivers are held to a higher standard than noncommercial drivers because they drive larger vehicles and are entrusted with safety-sensitive tasks, such as transporting people and hazardous materials. *Id.* at 735. The factual distinctions between *Wiebenga* and this case do not justify a departure from the rule that chemical tests that are inadmissible in a criminal proceeding (or a noncommercial driver's license proceeding) may serve as a basis for revocation of a CDL. Because Mocha's BAC tests were determined to be inadmissible in his criminal proceeding, the DOT was required to rescind the revocation of his noncommercial driver's license. The inadmissibility of the tests, however, does not preclude the DOT's disqualification of Mocha's CDL.

B. Final Administrative Decision

Pursuant to the law in effect in 2006, a driver is disqualified from operating a commercial motor vehicle for one year upon a conviction or final administrative decision that the driver was operating a motor vehicle under the influence of alcohol. Iowa Code § 321.208(2)(a) (2005). Because the criminal charges against Mocha were dismissed, there was no conviction. Therefore, a final administrative decision that Mocha was operating a vehicle under the influence was required.

Mocha concedes that the final administrative decisions affirmed his failure of the BAC test. He argues, however, that a “BAC over .08 does not equal being under the influence,” and there was no final administrative decision finding he operated a vehicle under the influence of alcohol. Therefore, he argues, “there is no triggering event justifying revoking or disqualifying the CDL,” and the disqualification should be rescinded as a matter of law.

The Iowa Supreme Court has held that “a BAC in excess of the legal limit [does] not necessarily mean the person was ‘intoxicated’ within the meaning of an exclusion in an insurance policy.” *State v. Price*, 692 N.W.2d 1, 4 (2005) (citing in *Benavides v. J.C. Penney Life Ins. Co.*, 539 N.W.2d 352, 355 (Iowa 1995)). “[A] person is ‘under the influence’ when the consumption of alcohol affects the person’s reasoning or mental ability, impairs a person’s judgment, visibly excites a person’s emotions, or causes a person to lose control of bodily actions.” *State v. Truesdell*, 679 N.W.2d 611, 616 (Iowa 2004) (citing *State v. Dominguez*, 482 N.W.2d 390, 392 (Iowa 1992)). “Thus, conduct and demeanor

normally become important considerations in determining whether a person is 'under the influence.'" *Price*, 692 N.W.2d at 3.

On October 11, 2006, a DOT reviewing officer issued a final agency decision on Mocha's appeal from the revocation of his noncommercial driver's license, adopting the ALJ's findings of fact and conclusions of law. The ALJ found that at the time of the arrest, the arresting officer

knew that [Mocha] has been operating a motor vehicle. [The officer] knew that there was an odor of alcoholic beverage and that [Mocha's] speech was slurred and mumbled. [The officer] knew that [Mocha] said that he had been drinking. [The officer] knew that [Mocha] failed the horizontal gaze nystagmus test, the walk-and-turn test, and the one-leg stand test. All that information, considered together, warranted a prudent person in believing that [Mocha] *had been operating the motor vehicle while under the influence of an alcoholic beverage.*

(Emphasis added.)

Although Mocha's blood alcohol tests were determined to be inadmissible in his criminal proceeding, the district court noted "[t]here is no relevant code section which provides that a revocation of a license that is later rescinded, in effect removes the final agency action. Nor has [Mocha] provided any statutory reference or case law to support his proposition." The rescission of the revocation did not void the October 11, 2006 final administrative decision finding Mocha operated a vehicle under the influence of alcohol.

Additionally, on December 29, 2006, a DOT reviewing officer issued a final agency decision on Mocha's appeal from the disqualification of his CDL privileges. The reviewing officer adopted the ALJ's findings of fact and conclusions of law, where the ALJ had taken official notice of the administrative file, including the decision on Mocha's non-commercial license. The ALJ noted

Mocha's BAC "test failure is strong evidence supporting the proposition that [Mocha] was *operating a motor vehicle while under the influence*," and concluded "the DOT properly disqualified the appellant's CDL for the one-year based upon the appellant's operation of a motor vehicle *while under the influence of an alcoholic beverage* as evidenced by a test result of 0.126 [BAC]." (Emphasis added.) "[A] BAC showing some level of alcohol in the blood makes it *more probable* that a person was under the influence of alcohol than without the evidence." *Price*, 692 N.W.2d at 4. The December 29, 2006 final agency decision is not limited to a finding that Mocha failed the BAC test. The ruling also constitutes a final administrative decision that Mocha was operating a vehicle under the influence.

C. Implied Consent

Mocha also argues the arresting officer's failure to read the CDL implied consent violated his due process rights under the Iowa and United States constitutions and therefore prohibits disqualification. Because Mocha has failed to support his argument with any authority, we need not consider it on appeal. See Iowa R. Civ. P. 6.14(1)(c) ("[F]ailure in the brief to state, to argue or to cite authority in support of an issue may be deemed waiver of that issue.").

III. Conclusion

The inadmissibility of Mocha's BAC test does not preclude the DOT's disqualification of his CDL. Further, the rescission of the revocation of Mocha's noncommercial license did not void the final administrative decision's finding he operated a vehicle under the influence of alcohol. Additionally, Mocha waived the implied consent issue due to his failure to cite any authority to support his

argument. Having considered all issues raised on appeal, whether or not specifically addressed in this opinion, we affirm the district court's decision affirming the DOT's disqualification of Mocha's CDL.

AFFIRMED.