

**IN THE COURT OF APPEALS OF IOWA**

No. 9-238 / 08-1415  
Filed May 29, 2009

**WILLIAM LLYL HORSTMAN,**  
Plaintiff-Appellant,

**vs.**

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

---

Appeal from the Iowa District Court for Boone County, Timothy J. Finn,  
Judge.

Appellant appeals from the district court's order affirming the  
disqualification of his commercial driver's license. **AFFIRMED.**

Matthew Lindholm of Gourley, Rehkemper & Lindholm, P.L.C., Des  
Moines, for appellant.

Christine Blome, Assistant Attorney General, Ames, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Eisenhauer, JJ.

**VOGEL, P.J.**

William Horstman appeals from the district court's order affirming the revocation of his commercial driver's license. He asserts that in a separate proceeding concerning the revocation of his non-commercial driver's license, there was no final agency decision finding that he operated a non-commercial motor vehicle "while under the influence of alcohol."

Horstman was stopped on May 26, 2007, after a police officer observed his vehicle swerving and crossing the center line. After failing field sobriety tests and exhibiting other signs of intoxication, he was arrested for operating a motor vehicle while intoxicated (OWI) pursuant to Iowa Code section 321J.2(1) (2007). Later a DataMaster test revealed a BAC of .173. As a result, the Iowa Department of Transportation (DOT) revoked his non-commercial driver's license under Iowa Code section 321J.12.

On August 16, 2007, Administrative Law Judge (ALJ) Wampler found that because Horstman was not advised of his right to call a family member pursuant to Iowa Code section 804.20, the suspension of his non-commercial driver's license should be rescinded.<sup>1</sup> On September 21, 2007, the reviewing officer, ALJ Hogue, concluded Horstman was not denied his rights, reversed the rescission order, and upheld the revocation. ALJ Hogue included in that ruling that "this decision exhausts all available administrative remedies and is the final agency action for the purposes of judicial review."

---

<sup>1</sup> Horstman called his union representative, but unable to reach him, left a voice message. Unable to reach his attorney, he again left a message. Horstman declined the officer's suggestion that he call a different attorney.

Because Horstman tested over the legal limit of .08 alcohol concentration, the DOT sent Horstman notice of the revocation of his commercial driver's license on September 27, 2007. See Iowa Code § 321.208 (providing disqualification from operating a commercial motor vehicle for one year upon final administrative decision that the person operated a motor vehicle while under the influence of an alcoholic beverage). However, on October 18, 2007, due to the district court's finding of inadmissibility of the BAC test results in the pending criminal OWI case, the DOT rescinded the September 21, 2007 revocation of Horstman's non-commercial driver's license. On December 4, 2007, ALJ Erickson reversed the revocation of Horstman's commercial driver's license. Finally, on December 19, 2007, ALJ Hogue reinstated the revocation of the commercial driver's license. The district court affirmed.<sup>2</sup>

On appeal from an order revoking a driver's license, our scope of review is limited to correction of errors at law. *Zenor v. Iowa Dep't. of Transp.*, 558 N.W.2d 427, 430 (Iowa Ct. App. 1996). District court decisions rendered in appellate capacity are reviewed to determine whether the district court correctly applied the law. *Id.*

We agree with the district court that both ALJ Hogue's September 21, 2007 decision revoking Horstman's non-commercial driver's license, as well as the December 19, 2007 ruling revoking Horstman's commercial driver's license were final agency actions. In both decisions, ALJ Hogue adopted the findings of fact, but not the conclusions of law of the August 16, 2007 decision by ALJ

---

<sup>2</sup> The district court noted that blood alcohol test results found inadmissible in a criminal proceeding may nonetheless be used as a basis to revoke a person's commercial driver's license. *Wiebenga v. Iowa Dep't. of Transp.*, 530 N.W.2d 732, 733 (Iowa 1995).

Wampler. The August 16, 2007 ruling detailed the arresting officer's observations and field sobriety tests, indicating Horstman was likely intoxicated; it also included the DataMaster test result that Horstman's BAC was .173, nearly one and one-half hours after the arrest. While Horstman continues to assert these facts do not equate to the specific wording of Iowa Code section 321.208(2)(a) of "under the influence of alcohol," we, like the district court, find his argument to be without merit. We therefore agree with the district court that there was substantial evidence in the record to support the DOT's decision to disqualify Horstman from operating a commercial vehicle for a one-year period. We affirm pursuant to Iowa Court Rule 21.29 (1)(d) and (e).

**AFFIRMED.**