

IN THE COURT OF APPEALS OF IOWA

No. 2-449 / 12-0001
Filed September 6, 2012

WILLIAM R. WILLIAMSON,
Petitioner-Appellant,

vs.

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

Appeal from the Iowa District Court for Polk County, Richard G. Blane II,
Judge.

Petitioner appeals the district court decision affirming the ruling of the Iowa
Department of Transportation revoking his driver's license. **AFFIRMED.**

George B. Jones, Lamoni, for appellant.

Thomas J. Miller, Attorney General, and B.J. Terrones and Kristin Ensign,
Assistant Attorneys General, for appellee.

Considered by Vaitheswaran, P.J., Doyle, J., and Huitink, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

HUITINK, S.J.**I. Background Facts & Proceedings.**

On December 3, 2010, Officer Darren Reid was working at a weigh station on I-80 in Iowa when he came into contact with William Williamson, who had an out-of-state commercial driver's license. Officer Reid immediately noticed Williamson had an overwhelming odor of marijuana. When questioned, Williamson admitted he had smoked a marijuana cigarette shortly before coming to the weigh station. He also stated he had possession of another marijuana cigarette in the cab of his truck, which the officer retrieved.

The officer noticed indications—rebound dilation of the eyes and muscle tremors—that showed Williamson was under the influence of a drug. Officer Reid read the entire implied consent advisory to Williamson. He then requested a urine test. Williamson refused to give a urine sample. He stated, “We both know that would come back dirty.”

When filling out the form “Request and Notice Under Iowa Code Chapter 321J/Section 321.208,” Officer Reid filled out part A, the driver's personal information; part B, stating there were reasonable grounds to believe Williamson was operating while intoxicated; and part C, stating a request for a urine sample had been made. Williamson signed the form indicating he refused the test. Officer Reid signed as the officer making the request for a specimen. Officer Reid also signed and dated part F, certifying, “under penalty of perjury and pursuant to the laws of the state of Iowa that the preceding is true and correct.”

Officer Reid did not at that time complete part D or part E of the form. Part D would have indicated the alcohol test results—here that Williamson had

refused to submit to chemical testing. Part E of the form would have given Williamson notice of the length of his license revocation. When Officer Reid submitted the form to the Iowa Department of Transportation, he was informed he needed to fill in parts D and E. He filled in these two parts, but did not re-sign the form. Official notice was sent to Williamson on December 20, 2010, informing him that his driving privileges in Iowa were revoked for one year pursuant to Iowa Code section 321J.9 (2009).

Williamson contested the revocation of his driver's license, claiming the revocation was invalid because Officer Reid had not filled in parts D and E of the form before giving it to Williamson. He also claimed the officer's action of later filling in the form was invalid because he did not re-sign to certify under penalty of perjury the information was true and correct.

An administrative hearing was held April 5, 2011. An administrative law judge (ALJ) found the officer had reasonable grounds to request a urine test. The ALJ also found the officer's failure to fully complete the form did not render the revocation invalid because "all of the information needed for the Department to act to issue a revocation was within the form." The ALJ's decision was affirmed by a reviewing officer, which constituted final agency action by the Department.

Williamson filed a petition seeking judicial review of the Department's decision. The district court determined even though Officer Reid did not fill in part D of the form, the information he certified under penalty of perjury was sufficient to satisfy section 321J.9. The court found the required certification was met by filling in part C. The court also noted that while under section 321J.9(4),

an officer may give immediate notice of an intention to revoke a person's driver's license, immediate notice is not required. Williamson was properly given notice of the revocation in the official notice mailed on December 20, 2010. The court affirmed the decision of the Department. Williamson appeals.

II. Standard of Review.

Judicial review of a driver's license revocation by the Department for refusal to submit to chemical testing is governed by Iowa Code chapter 17A. *Welch v. Iowa Dep't of Transp.*, 801 N.W.2d 590, 594 (Iowa 2011). The district court reviews the agency's decision for the correction of errors at law. *Id.* "On appeal, we apply the standards of chapter 17A to determine whether the conclusions we reach are the same as those of the district court." *Id.* This area of law has not been clearly vested in the discretion of the Department, so we need not give deference to the agency's interpretation of section 321J.9, and are free to substitute our own judgment. *Id.*

III. Part D.

A. Section 321J.9(1) provides:

If a person refuses to submit to the chemical testing, a test shall not be given, but the department, upon the receipt of the peace officer's certification, subject to penalty for perjury, that the officer had reasonable grounds to believe the person to have been operating a motor vehicle in violation of section 321J.2 or 321J.2A, that specified conditions existed for chemical testing pursuant to section 321J.6, and that the person refused to submit to the chemical testing, shall revoke the person's driver's license and any nonresident operating privilege

Section 321J.9 requires an officer to prepare a certified report prior to revoking a license for failure to submit to chemical testing. *See Tyler v. Iowa Dep't of Transp.*, 420 N.W.2d 442, 442 (Iowa 1988). The statute requires an

officer to certify, subject to penalty for perjury: (1) the officer had reasonable grounds to believe a person was operating while under the influence of alcohol or a drug; (2) the specified conditions for implied consent for chemical testing are present; and (3) the person has refused to submit to a chemical test. Iowa Code § 321J.9(1).

Williamson contends the Department did not properly revoke his driver's license because the officer did not complete part D of the form. Part D contains six boxes that may be checked off, one of which provides, "refused to submit to chemical testing." Williamson asserts that because the officer did not check off any of the boxes in part D prior to signing part F, which certifies under penalty of perjury that the form is true and correct, that the officer failed to certify that he had refused to submit to chemical testing, and for this reason the revocation was invalid. Williamson has the burden to show the revocation was invalid. See *Mary v. Iowa Dep't of Transp.*, 382 N.W.2d 128, 132 (Iowa 1986).

The officer did complete part C of the form prior to signing, under penalty of perjury, that the information was true and correct. The portion of part C that was completed provides, "**REQUEST FOR A SPECIMEN FOR DRUGS:** Having reasonable grounds to believe that you are under the influence of a drug other than alcohol or a combination of alcohol and another drug, I hereby request a," the officer here checked off a box to indicate urine, "specimen for chemical testing." The officer filled in blank areas to indicate the date and time of the request. Williamson signed a provision, "Having been read the Implied Consent Advisory, I," and checked off a box to indicate refuse, "to submit to the withdrawal

of the specimen(s) requested.” The officer then signed part C as the officer making the request.

The ALJ found that the form, “as it existed at the time it was both given to [Williamson] and first sent to the Department demonstrates that all of the information needed for the Department to act to issue a revocation was within the form.” On internal review, the ALJ’s decision was affirmed. The district court determined:

The fact that the box in Section D was not checked does not lead to a finding that Officer Reid did not certify under penalty of perjury that Williamson refused to submit to the chemical testing. The information contained in the above-quoted portion of Section C contains the necessary certification of Williamson’s refusal to submit to a urine test as would have otherwise been indicated if Section D had been checked. The required certification was met by the completion of Section C. The third requirement of Iowa Code section 321J.9 was met by the form as signed by Officer Reid on December 3, 2010.

We affirm the decision by the district court and the Department that the requirements of section 321J.9 were met by the form as submitted by the officer to the Department, even though part D had not been completed.

B. Williamson raises a claim that there was a requirement, aside from section 321J.9, that the form “Request and Notice Under Iowa Code Chapter 321J/Section 321.208,” needed to be completed in order for his license revocation to be valid. He asserts, “The law requires that section D be completed.”

Williamson does not cite any legal authority for the proposition that part D of the form needed to be completed in order for his license revocation to be valid. “Failure to cite authority in support of an issue may be deemed waiver of that

issue.” Iowa R. App. P. 6.903(2)(g)(3). The legal requirements for revocation of a driver’s license for failure to submit to chemical testing are found in section 321J.9. We have already discussed this issue in relation to the requirements of section 321J.9, and found the information submitted by the officer was sufficient to revoke Williamson’s driver’s license under that section.

IV. Part E.

Williamson contends the revocation of his driver’s license is invalid because the officer did not fill in part E of the form. Part E provides, “**NOTICE OF REVOCATION:** Effective ten days from the date of this notice, your privilege to operate a motor vehicle in Iowa is revoked pursuant to Iowa Code Chapter 321J for a period of:” then follows several boxes next to lengths of time. He claims because the officer did not provide him with this notice of revocation on December 3, 2010, the revocation of his license was improper.

Section 321J.9(4) provides:

The effective date of revocation shall be ten days after the department has mailed notice of revocation to the person by first-class mail, notwithstanding chapter 17A. The peace officer who requested or directed the administration of a chemical test *may*, on behalf of the department, serve immediate notice of intention to revoke and of revocation on a person who refuses to permit chemical testing.

(Emphasis added.)

The word “may,” confers a power, unlike “shall” which imposes a duty, or “must” which states a requirement. Iowa Code § 4.1(30). Thus, there is no requirement or duty in section 321J.9(4) requiring an officer to serve immediate notice. We agree with the district court’s statement, “the statute contemplates both that the peace officer may or may not serve the notice of revocation and that

the revocation shall commence ten (10) days after the agency 'has mailed the notice of revocation to the person by first class mail.'" See *id.* at § 321J.9(4). The Department mailed an official notice to Williamson on December 20, 2010. Williamson does not dispute that he received this notice.

We affirm the decision of the Department and the district court that Williamson has failed to show the revocation of his driver's license was improper because he did not receive notice of the revocation at the time the implied consent procedure was invoked.

We affirm the revocation of Williamson's driver's license for refusal to submit to chemical testing.

AFFIRMED.