IN THE COURT OF APPEALS OF IOWA

No. 6-904 / 05-1849
Filed December 13, 2006

DAVID JOHN BEAURIVAGE,
Petitioner-Appellant,

vs.

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

Appeal from the Iowa District Court for Johnson County, L. Vern Robinson, Judge.

David John Beaurivage appeals from a district court judicial review decision affirming an administrative decision of the Iowa Department of Transportation suspending his driving privileges. **AFFIRMED.**

John D. Jacobsen of Hallberg, Jacobsen, Johnson & Viner, P.L.C., Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, and Mark Hunacek, Assistant Attorney General, for appellee.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

MILLER, J.

David John Beaurivage appeals from a district court judicial review decision affirming an administrative decision of the Iowa Department of Transportation (IDOT) suspending his driving privileges pursuant to Iowa Code section 321.205 (2003). We affirm.

The following facts are undisputed and are shown by substantial evidence in the record before the agency when the record is considered as a whole. Shortly before midnight on August 11, 2004, the petitioner-appellant David John Beaurivage was stopped by an Illinois state trooper who had observed Beaurivage fail to signal a lane change and fail to stop at a stop line. The trooper smelled a strong odor of alcoholic beverage on Beaurivage's breath and observed his eyes to be bloodshot and glassy. Beaurivage failed a field sobriety test, a preliminary breath test indicated an alcohol concentration of 0.133, and chemical breath testing disclosed an alcohol concentration of 0.112, more than the Illinois statutory limit of 0.08.

The trooper reported the foregoing facts in a written, sworn report and in the early morning hours of August 12, 2004, issued a notice of summary suspension of Beaurivage's driving privileges, to take effect on the forty-sixth day thereafter. The notice informed Beaurivage of his right to a hearing to contest the suspension, and that he must file the petition seeking rescission of the suspension within ninety days. Beaurivage does not claim, and the record does not show, that he ever contested the suspension.

As a result of the events of August 11-12, 2004, Illinois charged Beaurivage with operating while intoxicated. He pled guilty to an amended or

substituted charge of reckless driving and received what appears to be the Illinois equivalent of a deferred judgment. The IDOT received notice from Illinois that Beaurivage had incurred a suspension of his driving privileges because of chemical testing which disclosed an alcohol concentration of 0.112. The IDOT served notice on Beaurivage that his privileges to operate motor vehicles were being revoked pursuant to Iowa Code section 321.205 for one year. Beaurivage contested the revocation. In final agency action in a contested case the IDOT found that Beaurivage's Iowa operating privileges had previously been revoked in 1997 under Iowa Code chapter 321 for a test refusal in Illinois, a finding which Beaurivage has not challenged, and ordered his driving privileges suspended for one year pursuant to section 321.205.

Beaurivage sought judicial review, "request[ing] that [the district court] make a legal determination whether the one-year motor vehicle license revocation was appropriate." The district court affirmed the final agency action. Beaurivage appeals.

Judicial review of agency action is governed by Iowa Code chapter 17A. *State v. Vargason*, 607 N.W.2d 691, 695 (Iowa 2000). The district court acts in an appellate capacity to correct errors at law. *Ludtke v. Iowa Dep't of Transp.*, 646 N.W.2d 62, 64 (Iowa 2002). In reviewing the district court's decision this court applied the standards of chapter 17A to determine whether our conclusions are the same as those of the district court. *Mycogen Seeds v. Sands*, 686 N.W.2d 457, 464 (Iowa 2004). If they are the same, we affirm; otherwise we reverse or grant other appropriate relief. Iowa Code § 17A.19(10).

On appeal Beaurivage states the issue presented as follows: "The district court erred in the reading, interpretation and plain language of Iowa Code § 321.205." On appeal, as in the district court, Beaurivage does not cite to or rely on any one or more of the possible grounds of agency error cataloged in Iowa Code section 17A.19(10). From the language of his stated issue he may intend either section 17A.19(10)(c), agency action "Based upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency," or section 17A.19(10)(*l*), agency action "Based upon an irrational, illogical, or wholly unjustifiable interpretation of a provision of law whose interpretation has clearly been vested by a provision of law in the discretion of the agency."

Section 321.205 provides:

> The [Iowa Department of Transportation] is authorized to suspend or revoke the driver's license of a resident of this state upon receiving notice of the conviction of the resident in another state for an offense which, if committed in this state, would be grounds for the suspension or revocation of the license or upon receiving notice of a final administrative decision in another state that the resident has acted in a manner which would be grounds for suspension or revocation of the license in this state.

The IDOT has at no time claimed that Beaurivage was convicted of an offense which, if committed in this state, would be grounds for the suspension or revocation of his license. Nor did the IDOT or the district court find any such conviction. Rather, the IDOT suspended Beaurivage's license on the basis of an Illinois suspension for a chemical breath test disclosing an alcohol concentration of 0.112. We thus focus on the second part of section 321.205, suspension or revocation of Iowa driving privileges based upon a final administrative decision in another state.

Concerning this second part of section 321.205, Beaurivage claims the Illinois suspension of his driving privileges was not "final." He acknowledges in his brief that the Illinois suspension was an "administrative decision," but asserts that because it was a "summary suspension" it was not "final." However, as argued by the IDOT, finality may occur either by exhaustion of review remedies or waiver of them. *See, e.g., Schilling v. Iowa Dep't of Transp.*, 646 N.W.2d 69, 73 (Iowa 2002) (discussing the requirement of finality for the purpose of another license revocation statute, and noting that a conviction is final if the defendant has "exhausted or waived any postorder challenge."). Beaurivage had a right to a hearing to contest the Illinois suspension, was given notice of his right to so contest the suspension, and did not contest it. We agree with the IDOT and the district court that the Illinois suspension of Beaurivage's driving privileges constituted a "final administrative decision" in Illinois.

We have considered all arguments made by Beaurivage and find them to be without merit. We therefore affirm the district court's affirmance of the IDOT's suspension of Beaurivage's driving privileges.

AFFIRMED.