

**IN THE COURT OF APPEALS OF IOWA**

No. 8-776 / 08-0073  
Filed November 26, 2008

**3 A'S AMUSEMENT,**  
Petitioner,

**TAMMY GILLESPIE,**  
Petitioner-Appellant,

**vs.**

**DEPARTMENT OF INSPECTIONS & APPEALS,  
SOCIAL AND CHARITABLE GAMING DIVISION,**  
Respondent-Appellee.

---

Appeal from the Iowa District Court for Polk County, Robert J. Blink,  
Judge.

Tammy Gillespie and 3 A's Amusement appeal from the district court  
order affirming the department's revocation of registrations for amusement  
devices and as an amusement device distributor. **AFFIRMED.**

Thomas Fisher of Parrish, Kruidenier, Dunn, Boles, Gribble, Parrish,  
Gentry & Fisher, L.L.P., Law Firm, Des Moines, for appellant.

Thomas J. Miller, Attorney General, and John R. Lundquist, Assistant  
Attorney General, Administrative Law Division, for appellee.

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

**VAITHESWARAN, J.**

The Department of Inspections and Appeals regulates “amusement devices.” Iowa Code §§ 99B.1(2), .2, .10B(1) (Supp. 2005). An amusement device is a machine that dispenses prizes, generally a ticket or token, which can be used to purchase up to \$5 of merchandise.

Tammy Gillespie and 3A’s Amusement had forty-seven registered amusement devices in several establishments. In 2005, Gillespie warehoused all the devices in light of the competing popularity of the Iowa lottery games. She did not notify the department that the amusement devices were in storage.

In 2006, all amusement devices required to be registered were to be fitted with counting mechanisms to document the volume of business. See Iowa Code § 99B.10(6) (“Each electrical or mechanical amusement device required to be registered as provided by this section shall, by January 1, 2006, include on the device a counting mechanism which establishes the volume of business of the device.”). Additionally, semi-annual reports were to be filed detailing the volume of business for each half of the year. Iowa Admin. Code r. 481-105.10.<sup>1</sup> These reports were due thirty days after June 30. *Id.* r. 481-105.10(3).<sup>2</sup>

Gillespie had difficulty gaining access to the computer-generated reporting forms. In late July 2006, she spoke to a department employee about the difficulty. She also informed the department her devices had been in storage

---

<sup>1</sup> At the time the revocation notices were issued, the rule required the filing of semi-annual reports. That rule was amended effective September 1, 2007 to provide for the filing of annual rather than semi-annual reports. See 30 Iowa Admin. Bull. 455-56 (Aug. 29, 2007).

<sup>2</sup> This rule was amended to require the filing of reports by July 31. 30 Iowa Admin. Bull. 455 (Aug. 29, 2007).

during the entire reporting period and were not fitted with counting mechanisms. She asked whether she needed to file a semi-annual report under these circumstances. The employee advised her she did not need to file the report. The precise date of this conversation was disputed, with Gillespie contending it took place before the report was due, and the employee maintaining it occurred after the due date.

The department subsequently revoked the registration for distributorship and the amusement device registrations. The department found that Gillespie and 3 A's Amusement did not timely submit a semi-annual report detailing the volume of their business activity. The department also found that Gillespie and 3 A's Amusement did not timely place counting mechanisms on their registered devices. The district court affirmed the agency decision and this appeal followed.

Our review of the agency's fact-findings is for substantial evidence. See Iowa Code § 17A.19(10)(f)(1) (2007).

Substantial evidence means the quantity and quality of evidence that would be deemed sufficient, by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance.

*Id.*

We begin with the agency's finding that the report was untimely. Gillespie admitted in her notice appealing the initial revocation notices that she did not timely submit a semi-annual report. The admission amounted to substantial evidence in support of the agency's fact-finding.

This does not end our inquiry, because we are also faced with the agency employee's advice to Gillespie to forego submitting a semi-annual report. That

advice and Gillespie's reliance on it evoked sympathy from the administrative law judge. Nonetheless, the ALJ found that, as of the date the advice was given, the report was already untimely, providing an independent basis for revocation.

This additional fact-finding concerning the date on which the advice was given was supported by the department employee's testimony. Although Gillespie provided contradictory testimony, the ALJ found her recollection to be less precise than the employee's. It was the ALJ's prerogative to weigh the evidence in this fashion. See Iowa Code § 17A.19(10)(f)(3) (requiring us to consider "any determinations of veracity by the presiding officer who personally observed the demeanor of the witnesses and the agency's explanation of why the relevant evidence in the record supports its material findings of fact"). As the agency adopted the ALJ's fact-findings, including this one, and the employee's testimony provided substantial evidentiary support for the fact-finding concerning the date of the advice, we uphold the finding.

While we accept the finding that the employee's advice came after the filing deadline, we do not accept the conclusion flowing from this fact-finding. The department revoked Gillespie's distributorship and registrations on the basis of the untimely filing of a report that the agency's own employee stated did not need to be filed. We conclude this basis for the decision was irrational. See Iowa Code § 17A.19(10)(i) (reviewing agency action to determine if it is "[t]he product of reasoning that is so illogical as to render it wholly irrational.").

This leaves us with the remaining reason cited by the agency, Gillespie's failure to timely install counting mechanisms on the amusement devices. In her notice appealing the initial revocation decision, Gillespie stated she had the

counting mechanisms installed “during the week of July 31, 2006.” This was well after the January 1, 2006 deadline specified by statute. Iowa Code § 99B.10(6). Gillespie and 3 A’s Amusement point to evidence that the devices were in storage during the reporting period. In their view, it follows that the amusement devices did not need counting mechanisms. However, Iowa Code section 99B.10(6) does not afford an exception for warehoused devices.

Gillespie could have circumvented this problem by advising the department in 2005 that her amusement devices were no longer “in operation or distributed in this state.” Iowa Code § 99B.10(4)(1). By her own admission, she did not do so. Because there was substantial evidence to support the agency finding that she did not timely install counting mechanisms, the agency’s revocation of the distributorship and registrations was proper on this ground.

Gillespie and 3A’s Amusement raise several other arguments in support of reversal. We are not persuaded by those arguments.

We affirm the district court’s ruling.

**AFFIRMED.**