OFFICE OF STATE ADMINISTRATIVE HEARINGS STATE OF GEORGIA

JOSHUA TERRELL JENNINGS,

Petitioner, : Docket No.: OSAH-DDS-ALS-1324952-48-

RW

v.

Driver's License No.: 0501903741

DEPARTMENT OF DRIVER SERVICES,

Respondent.

FEB 21 2013

FINAL DECISION

I. Introduction

Petitioner seeks review of Respondent's suspension of his driver's license. A hearing was held on February 20, 2013. Patricia Abbott Esq. appeared for Petitioner, and Officer Coylee Danley appeared for the Respondent. For the reasons indicated, Respondent's action is **AFFIRMED**.

II. Findings of Fact

1.

On November 18, 2012, Officer Danley received a dispatch that an individual had reported an unsafe driver on the roadway. The dispatch also noted the vehicle's license tag. Soon thereafter, the officer encountered the vehicle identified by dispatch and began to follow it. He observed the vehicle cross the fog line, and the driver appeared to be having difficulty maintaining his speed. Based on his observations, the officer stopped the vehicle. *Testimony of Officer Danley*.

2.

Petitioner was driving the vehicle. When Officer Danley approached the vehicle, he noticed a strong odor of alcohol coming from the vehicle. The officer asked Petitioner for his driver's license; Petitioner fumbled through his wallet and handed the officer a credit card. *Testimony of Officer Danley*.

3.

The officer asked the Petitioner to submit to field sobriety testing. At the officer's direction, Petitioner performed the HGN test, the walk and turn test, and the one leg stand. Officer Danley noted multiple clues on all of these tests, indicating Petitioner was intoxicated. *Testimony of Officer Danley*.

Officer Danley then placed Petitioner under arrest for Driving Under the Influence and informed Petitioner of his implied consent rights and the consequences of submitting or refusing to submit to a State-administered chemical test. Petitioner refused testing at the scene, but claims that he asked for testing once he was transported to the Douglas County Jail. *Testimony of Officer Danley; Testimony of Petitioner*.

III. Conclusions of Law

1.

Respondent has the burden of proof. OSAH Rule 7(1). The standard of proof is preponderance of the evidence. OSAH Rule 21(4).

2.

Based on the factors articulated by Officer Danley, the arresting officer had probable cause to believe that Petitioner was operating and in actual physical control of a motor vehicle while under the influence of alcohol. He properly informed Petitioner of his implied consent rights and the consequences of submitting or refusing to submit to a State-administered chemical test.

3.

As acknowledged by both Parties, Petitioner initially refused to consent to chemical testing. Petitioner claims he requested testing after he arrived at the Douglas County Jail. The Georgia Court of Appeals has articulated a five-part test that must be met in order for a party to effectively rescind a prior refusal. In a case of prior refusal, consent must occur (1) within a very short and reasonable time after the prior first refusal; (2) when a test administered upon the subsequent consent would still be accurate; (3) when testing equipment is still readily available; (4) when honoring the request would result in no substantial inconvenience or expense to the police; and (5) when the individual requesting the test has been in the custody of the arresting officer and under observation for the entire time since arrest. Dept. of Public Safety v. Seay, 206 Ga. App. 71, 424 S.E.2d 301 (1992). In this case, however, the undersigned does not find Petitioner's testimony credible that he requested testing, so he cannot meet the Seay test.

4.

Refusal to submit to testing mandates suspension of the driver's license. Accordingly, the suspension of Petitioner's driver's license and driving privileges by DDS was proper. O.C.G.A. § 40-5-67.1.

IV. Decision

For the aforementioned reasons, Respondent's action suspending Petitioner's driving privileges is **AFFIRMED.**

SO ORDERED, this 29 day of felo

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RONIT WALKER Administrative Law Judge