

4.

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.

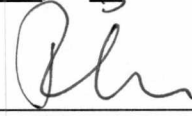
4.

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 19 day of February, 2013.



RONIT WALKER
Administrative Law Judge