OFFICE OF STATE ADMINISTRATIVE HEARINGS STATE OF GEORGIA

ANTHONY RUTHERFORD,

Petitioner,

Docket No.: OSAH-DDS-ALS-1327796-48-

Walker

V.

Driver's License No.: 053067697

DEPARTMENT OF DRIVER SERVICES,

Respondent.

FEB 21 2013

Virginia Ramsey, Legal Assistant

FINAL DECISION

I. Introduction

Petitioner seeks review of Respondent's suspension of his driver's license. A hearing was held on February 20, 2013. Petitioner represented himself and Officer Matthew Stachowicz appeared for Respondent. For the reasons indicated, Respondent's action is **AFFIRMED**.

II. Findings of Fact

1.

At 2:49 a.m. City of Douglasville Police Officer Stachowicz received a dispatch for a welfare check of an individual who appeared to be sleeping in his vehicle. He arrived at an intersection of Highway Five and Douglas Boulevard and saw that Petitioner's vehicle was in the left hand turn lane. Petitioner was behind the wheel with his eyes closed and the car was running. After Petitioner did not respond to officers' attempts to wake him, Officer Stachowicz opened the vehicle's door and shifted the vehicle from the drive to the park gear. *Testimony of Officer Stachowicz*.

2.

When Petitioner awoke, the Officer noticed that he appeared disoriented. Petitioner's eyes were bloodshot and glassy, and his speech slow and slurred. He appeared unsteady and his movements were slow. Although the Officer smelled the strong odor of alcohol, Petitioner denied that he had been drinking. He maintained he had taken some medication. *Testimony of Officer Stachowicz*.

3.

Petitioner agreed to perform Field Sobriety Testing. The Officer performed the HGN test, and observed six clues, indicating that the Petitioner was intoxicated. Officer Stachowicz also noted five out of eight clues on the walk and turn, and three out of four clues on the one leg stand, also indicating intoxication. The officer also asked Petitioner to estimate the passing of thirty seconds; Petitioner took seventy one seconds to count until thirteen. Testimony of Officer Stachowicz.

These facts caused the arresting officer to believe that Petitioner had consumed an unknown quantity of alcohol in such a manner as to make Petitioner a less safe driver. He 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. *Testimony of Officer Stachowicz*.

5.

Petitioner maintains he has no recollection of refusing the testing. He also notes that he was taking heart medication at the time of the incident, was very tired, and suffers from sleep apnea.

Testimony of Petitioner; Petitioner's Exhibits 1-3.

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 facts articulated by Officer Stachowicz, 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. Petitioner had fallen asleep while driving a vehicle, smelled of alcohol, was unsteady and confused, and exhibit multiple manifestations of intoxication during field sobriety testing.

3.

Officer Stachowicz gave credible testimony that he properly informed Petitioner of his implied consent rights and the consequences of submitting or refusing to submit to a state-administered breath test. In this case, Petitioner suggests that he did not hear his implied consent rights as read by the Officer, and thus did not knowingly refuse testing. Nonetheless, Georgia law only requires an officer to advise a defendant of his implied consent warnings and does not require the officer to make sure an individual understands these rights. *Chancellor v. Dozier*, 283 Ga. 259 (2008); *Rodriguez v. State*, 275 Ga. 283 (2002).

Petitioner noted that the officer had given him two forms, arguing one of the forms did not indicate he refused testing. After reviewing these forms, the undersigned believes that both indicated that Petitioner refused testing. Moreover, the officer offered a credible explanation for the duplicate forms, explaining he had made an error on the first form and reissued the correct form.

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. § 40-5-67.1.²

IV. Decision

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

SO ORDERED, this 20 day of ____

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RONIT WALKER
Administrative Law Judge

² Although Petitioner asks for a limited permit, the undersigned is not authorized to issue limited permits in an Administrative Hearing.