



FILED
OSAH

JUN 25 2013

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

KEEGAN HEIGHLEY PETERSON,
Petitioner,

v.

DEPARTMENT OF DRIVER SERVICES,
Respondent.

:
: **Docket No.**
: **OSAH-DDS-ALS-1338591-29-Miller**
:
: **Agency Reference No.: 053610859**
:
:

Gloria McDonald
Gloria McDonald, Chief Hearing Officer

FINAL DECISION

I. Introduction

This matter is an administrative review of the Respondent's decision to suspend the Petitioner's driver's license pursuant to O.C.G.A. § 40-5-67.1. The hearing took place on June 18, 2013, before the undersigned administrative law judge of the Office of State Administrative Hearings. After considering all of the admissible evidence, the Respondent's action is hereby **AFFIRMED**.

II. Findings of Fact

The Court has considered the entire evidence in this case, and based upon a preponderance of the credible evidence makes the following findings of fact:

1. On April 13, 2013, at approximately 2:00 a.m., Officer Nathaniel Franco of the Athens-Clarke County Police Department initiated a traffic stop of the Petitioner's vehicle after observing that one of its taillights was not functioning. (Testimony of Ofc. Franco.)
2. While speaking with the Petitioner, the officer noted that her eyes were red, bloodshot, and watery, and there was a strong odor of an alcoholic beverage coming from her vehicle and breath. The Petitioner denied that she had consumed any alcoholic beverages. (Testimony of Ofc. Franco.)
3. The Petitioner initially declined to take any field sobriety tests, but changed her mind after the officer told that she would be placed under arrest. She then performed the following field sobriety evaluations at the officer's request: horizontal gaze nystagmus, walk and turn, and one-leg stand. The Petitioner's performance on the field sobriety tests was unsatisfactory. (Testimony of Ofc. Franco.)
4. The officer placed the Petitioner under arrest for driving under the influence of alcohol, read her the implied consent notice for drivers age 21 and over, and designated a breath test as the state-administered chemical test. (Testimony of Ofc. Franco; Exhibit R-1.)

5. The Petitioner refused to submit to the state-administered test. (Testimony of Ofc. Franco.)

III. Conclusions of Law

Based upon the above findings of fact, the Court makes the following conclusions of law:

1. The arresting officer had reasonable grounds to believe the Petitioner was driving or in actual physical control of a moving motor vehicle while under the influence of alcohol or a controlled substance, and the Petitioner was lawfully placed under arrest for violating O.C.G.A. § 40-6-391. O.C.G.A. § 40-5-67.1(g)(2)(A)(i).
2. At the time he requested that the Petitioner submit to the state-administered chemical test, the arresting officer properly informed the Petitioner of her implied consent rights and the consequence of submitting or refusing to submit to such test. O.C.G.A. § 40-5-67.1(g)(2)(B).¹
3. The Petitioner refused the state-designated test. O.C.G.A. § 40-5-67.1(g)(2)(C)(i).
4. The suspension of the Petitioner's driver's license or driving privilege by the Department of Driver Services was proper. O.C.G.A. § 40-5-67.1.

IV. Decision

IT IS HEREBY ORDERED that the Respondent's decision to administratively suspend the Petitioner's driver's license, permit, or privilege to operate a motor vehicle or commercial motor vehicle in this state is **AFFIRMED**.

SO ORDERED, this day of , 2013.

JUN 25 2013



KRISTIN L. MILLER
Administrative Law Judge



¹ The Petitioner contends that the officer's reading of the implied consent notice was improper. More specifically, the Petitioner contends that she was placed under arrest prior to the administration of field sobriety tests and that the notice was therefore untimely. However, it is unclear from the record whether the officer effectuated an arrest at that time or whether he merely informed the Petitioner of the consequences of her refusal to complete the field sobriety tests. Moreover, even assuming that the Petitioner was arrested prior to field sobriety testing, there was no evidence presented regarding the duration of the tests. This Court is therefore unable to conclude that the notice was not read "at a time as close in proximity to the instant of arrest as the circumstances of the individual case might warrant." Perano v. State, 250 Ga. 704, 708 (1983).