

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

PATRICIA ANN MCNAIR,
Petitioner,

v.

DEPARTMENT OF DRIVERS SERVICES,
Respondent.

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Docket No.: OSAH-DPS-ALS-1406362-157-Oakley

Agency Reference No.: 032061430

FINAL DECISION

I. Introduction

Petitioner requested a hearing in response to Respondent's issuance of an administrative license suspension of Petitioner's driver's license or privilege to drive in the State of Georgia in accordance with the provisions of O.C.G.A. § 40-5-67.1. For the reasons indicated below, Respondent's action is **AFFIRMED**.

II. Findings of Fact

The credible evidence, including the testimony of Trooper Grier and the video of the Petitioner's arrest, supports the following findings:

1. On July 3, 2013, the arresting officer investigated a traffic accident involving the Petitioner's truck which had exited the road and become mired in a ditch. At the time of the arresting officer's arrival at the scene of the accident, the Petitioner was not in her vehicle. A passerby informed the arresting officer of the presence of a pedestrian a short distance from the location of the Petitioner's truck. The arresting officer dispatched a colleague to the Petitioner's home as indicated on the information contained in the State's vehicle registration data base. The Petitioner's home was a short distance from the scene of the accident. The Petitioner was returned to the scene of the accident where the arresting officer observed that the Petitioner's clothing was wet. The condition of the Petitioner's clothing was consistent with having been outside in the recent past.
2. The arresting officer observed that the hood of the Petitioner's truck was warm despite the rainy conditions existing at the scene of the accident.
3. The foregoing findings support a determination that the Petitioner was in actual physical control of a moving motor vehicle in this State at the time of the accident.
4. The arresting officer observed that the Petitioner had a strong odor of an alcoholic beverage on her person, and exhibited bloodshot and red eyes as well as watery eyes. The Petitioner admitted to the consumption of alcohol.
5. The arresting officer did not request that the Petitioner perform field sobriety evaluations due to the rainy conditions at the scene of the accident and the wet roadway. The arresting officer did request that the Petitioner perform a preliminary breath test which registered a high positive reading.
6. The foregoing findings caused the arresting officer to believe that the Petitioner had consumed an unknown quantity of alcohol in such a manner as to make the Petitioner a less safe driver.
7. The Petitioner was thereupon lawfully placed under arrest for driving under the influence of alcohol and properly read the applicable implied consent notice.
8. After being properly advised of the applicable implied consent notice, the Petitioner submitted to the state administered chemical tests to determine the blood concentration of alcohol in her body. The state administered chemical tests were properly administered by an individual possessing a valid permit issued by the Division of Forensic Sciences of the Georgia Bureau of Investigation on an instrument in good working order and approved by the Division. The results of the tests indicated that the Petitioner exceeded the minimum alcohol concentration allowable by statute and was greater than .08.

The evidence to the contrary was self-serving and not credible.

III. Conclusions of Law

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

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 and was lawfully placed under arrest for violating O.C.G.A. § 40-6-391 and O.C.G.A. § 40-5-67.1(g)(2)(A)(i).

At the time of the request for the tests the arresting officer informed the Petitioner of his/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).

The test results indicated an alcohol concentration within the Petitioner of .08 grams or more. O.C.G.A. 40-5-67.1(g)(2)(C)(ii).

The tests were properly administered in compliance with O.C.G.A. 40-5-67.1(g)(2)(D).

Accordingly, the suspension of the Petitioner's driver's license and driving privilege by Respondent was proper. O.C.G.A. § 40-5-67.1.

IV. Decision

IT IS HEREBY ORDERED THAT the decision of Respondent 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 20th day of September, 2013.

LOIS F. OAKLEY
Administrative Law Judge