



FILED

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

SEP 26 2013

JUSTIN DAVID ATKINS,
Petitioner,

:
:

: **Docket No.**

Gloria McDonald

Gloria McDonald, Chief Legal Assistant

v.

: **OSAH-DDS-ALS-1401828-29-Miller**

**DEPARTMENT OF DRIVER
SERVICES,**
Respondent.

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: **Agency Reference No.: 053170250**

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 was held on September 24, 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 **REVERSED**.

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 June 19, 2013, at approximately 3:45 a.m., Officer David Harrison of the Athens-Clarke County Police Department responded to the scene of a single-vehicle accident. When he arrived at the scene, he observed that a vehicle had collided with a utility pole. The Petitioner approached the officer and reported that he had fallen asleep while driving the vehicle and had awakened to find that he had struck the power pole. (Testimony of Ofc. Harrison.)
2. While speaking with the Petitioner, the officer noted that there was an odor of an alcoholic beverage coming from the Petitioner's person. The Petitioner stated that he was "fine" and asked the officer to give him a breath test. The Petitioner's speech was normal, and he was steady on his feet. The officer was unable to administer a preliminary breath test because he was unable to locate a portable machine. (Testimony of Ofc. Harrison.)
3. The Petitioner performed the following field sobriety evaluations requested by the officer: horizontal gaze nystagmus, walk and turn, and one-leg stand. The officer determined that the Petitioner's performance was unsatisfactory. However, during the horizontal gaze nystagmus test, the officer noted that the Petitioner's eyes did not display equal tracking. Despite this, the officer completed the test and determined that the Petitioner had exhibited six out of six clues of impairment. During the one-leg stand test, the officer realized that he had not correctly timed the test. Therefore, he asked the Petitioner to repeat it. Although the Petitioner displayed several clues of impairment during the second test, he did not display any clues during the first test. (Testimony of Ofc. Harrison.)

4. After considering the errors in the administration of the field sobriety tests, as well as the Petitioner's recent involvement in a motor vehicle accident, which may have impacted his performance, the Court gives no weight to the results of field sobriety testing.

III. Conclusions of Law

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

1. One of the issues to be determined in an administrative license suspension hearing is whether the 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. O.C.G.A. § 40-5-67.1(g)(2)(A)(i). The Respondent did not meet its burden as to this issue.

At the hearing, the evidence showed only that the Petitioner had an odor of alcohol about his person and that he had been involved in a motor vehicle accident. While this evidence was sufficient to prove that the Petitioner had consumed some unknown quantity of alcohol, it did not establish that the officer had reasonable grounds to believe that the Petitioner was under the influence of alcohol, as the Petitioner provided a reasonable explanation for the accident and there was no reliable evidence of any other indicia of impairment. State v. Gray, 267 Ga. App. 753 (2004); State v. Batty, 259 Ga. App. 431, 432 (2003); State v. Encinas, 302 Ga. App. 334, 335-37 (2010).

2. The suspension of the Petitioner's driver's license or driving privilege by the Department of Driver Services was not 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 **REVERSED**.

SO ORDERED, this 26th day of September, 2013.


KRISTIN L. MILLER
Administrative Law Judge

