

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

LACEY LUKE,
Petitioner,

v.

DEPARTMENT OF DRIVER SERVICES,
Respondent.

Docket No.: 2226156
2226156-OSAH-DPS-ALS-25-Teate



11/09/2022

Agency Reference No.: xxxxxxxx

FINAL DECISION

A handwritten signature in blue ink, appearing to read 'Kristan Moses', is written over a horizontal line.

Kristan Moses, Legal Assistant

I. Introduction

This matter is an administrative review of the Respondent's decision to suspend the Petitioner's driver's license, permit, or privilege to operate a motor vehicle or commercial motor vehicle in the State of Georgia pursuant to O.C.G.A. § 40-5-67.1. After considering all of the admissible evidence and the arguments of the parties at the hearing, the Respondent's action is **AFFIRMED** for the reasons stated below.¹

II. Findings of Fact

1. The arresting officer:
 - initiated a stop of a vehicle driven by the Petitioner based on a traffic violation. (Petitioner ran a red light)
 - responded to the scene of a motor vehicle collision involving a vehicle driven by the Petitioner. The collision did did not result in a serious injury or fatality.
 - other: _____.
2. While speaking with the Petitioner, the arresting officer noted that the Petitioner exhibited:
 - bloodshot/red eyes
 - glassy eyes
 - watery eyes
 - slurred speech
 - slow speech
 - unsteadiness on his/her feet
 - swaying
 - confusion
 - a _____ odor of an alcoholic beverage coming from the Petitioner's vehicle person breath
 - other: a strong odor of marijuana from Petitioner's breath and vehicle; eyes lacking convergence; mumbled speech at times
3. In response to the arresting officer's inquiry regarding the Petitioner's consumption of alcoholic beverages, the Petitioner:
 - denied consuming any alcoholic beverages.
 - admitted consuming alcoholic beverages (____).
 - other: Petitioner admitted smoking marijuana earlier.
4. The Petitioner exhibited clues of impairment on the following field sobriety evaluations, which he/she performed at the arresting officer's request:
 - horizontal gaze nystagmus (performed but no clues as anticipated for marijuana use)
 - walk and turn
 - one-leg stand
 - other: modified Rhomberg evaluation

The Petitioner completed an Alco-Sensor/preliminary breath test, which was positive for alcohol.

The Petitioner refused the arresting officer's request for: field sobriety evaluations an Alco-Sensor/preliminary breath test.

¹ The record remained open through November 8, 2022, for submission of a videotape from Petitioner that was not received per email directive on November 7, 2022. Upon appropriate motion for reconsideration within 10 days of the issuance of this Final Decision, said videotape may be submitted along with such a motion.

- The arresting officer did not ask the Petitioner to perform field sobriety evaluations.
5. The arresting officer placed the Petitioner under arrest for driving under the influence of alcohol or a controlled substance, read him/her the implied consent notice for drivers age 21 and over drivers under age 21 commercial drivers, and designated a breath blood urine test as the state-administered chemical test.
6. After being advised of his/her implied consent rights, the Petitioner:
- refused to submit to the state-administered test designated by the arresting officer.
 - failed to provide an adequate sample for the state-administered breath test designated by the arresting officer, which the officer considered a refusal of the test.
 - agreed to submit to the state-administered test designated by the arresting officer, and:
 - The state-administered test of the Petitioner's breath was 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 state-administered test of the Petitioner's blood was conducted by the Division of Forensic Sciences of the Georgia Bureau of Investigation.
- The results of the state-administered test indicated that the Petitioner's blood alcohol concentration was over the applicable legal limit.

III. Conclusions of Law

The Respondent bears the burden of proof in this matter. Ga. Comp. R. & Regs. 616-1-2-.07(1). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4). The Respondent met its burden and proved the following:


- 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).
- The Petitioner was involved in a motor vehicle accident or collision resulting in a serious injury or fatality. O.C.G.A. § 40-5-67.1(g)(2)(A)(ii).
- At the time of the request for the state-administered test or 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(s). O.C.G.A. § 40-5-67.1(g)(2)(B).
- The Petitioner refused the state-administered test(s). O.C.G.A. § 40-5-67.1(g)(2)(C)(i).
- The state-administered test or 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 approved by the Division of Forensic Sciences or a test conducted by the Division of Forensic Sciences, and the machine at the time of the test was operated with all its electronic and operating components prescribed by its manufacturer properly attached and in good working order. A copy of the operator's permit showing that the operator has been trained on the particular type of instrument used and one of the original copies of the test results or, where the test was performed by the Division of Forensic Sciences, a copy of the crime lab report, was/were introduced into evidence and satisfied the requirements of O.C.G.A. § 40-5-67.1(g)(2)(D).
- The test results indicated an alcohol concentration of 0.08 grams or more; or, for a Petitioner under the age of 21, an alcohol concentration of 0.02 grams or more; or, for a Petitioner operating or having actual physical control of a commercial motor vehicle, an alcohol concentration of 0.04 grams or more. O.C.G.A. § 40-5-67.1(g)(2)(C)(ii).

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

IV. Decision

The Respondent's decision to suspend the Petitioner's driver's license, permit, or privilege to operate a motor vehicle or commercial motor vehicle in the State of Georgia is hereby sustained and **AFFIRMED**.

SO ORDERED, this 9th day of November 2022.


Steven W. Teate, Administrative Law Judge

