

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

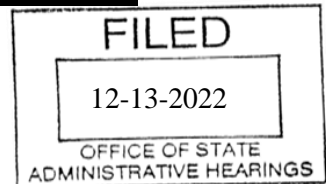
**DAVID HARBUCK JR,**  
Petitioner,

v.

**DEPARTMENT OF DRIVER  
SERVICES,**  
Respondent.

Docket No.: 2304085  
2304085-OSAH-DPS-ALS-123-Woodard

Agency Reference No.: [REDACTED]



**FINAL DECISION**

**I. Introduction**

This matter is an administrative review of Respondent’s decision to suspend 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. The hearing took place on December 12, 2022 at Crisp County Courthouse, Cordele, Georgia, before the undersigned administrative law judge. For the reasons indicated below, Respondent’s action is **REVERSED**.

**II. Findings of Fact**

Based upon a preponderance of the credible evidence before this Court, all provisions were **NOT** met for the suspension of Petitioner’s driver’s license because **Respondent failed to establish that:**

At the time of the request for the chemical test(s), the arresting officer properly informed Petitioner of Petitioner’s implied consent rights and the consequences of submitting or refusing to submit to such test(s). O.C.G.A. § 40-5-67.1(g)(2)(B). This finding is supported by the following evidence:

Trooper Gill of the Georgia State Patrol initiated a traffic stop of Petitioner’s vehicle after observing Petitioner failure to maintain his lane of travel. Trooper Brown arrived on the scene almost immediately after the initial stop. Trooper Gill notified Brown that he smelled an odor of alcohol coming from Petitioner, and requested that Brown continue the investigation. Brown noticed a strong odor of alcohol on Petitioner’s breath, and that he had bloodshot and watery eyes. Petitioner exhibited clues of alcohol impairment on the horizontal gaze nystagmus and walk-and-turn evaluations, and provided a “+” reading for alcohol on a breath sample he provided on Trooper Brown’s portable alcosensor device.

Brown had reasonable grounds to believe that Petitioner was under the influence of alcohol and that he drove his vehicle in a less safe manner. Brown arrested Petitioner for Driving Under the Influence under O.C.G.A. § 40-6-391 and read the contents of the Georgia Implied Consent Warnings card for suspects over age 21 from a preprinted card. Both readings are recorded on Trooper Brown’s video and audio of his investigation, and were played in open court during the hearing. A copy of the entire investigation was submitted to the court following the hearing and has been made part of the permanent case record.

The legal blood alcohol concentration (BAC) for drivers over age 21 is 0.08 grams and is printed on the Implied Consent Warnings card. Trooper Brown read the warnings twice, the first time requesting that Petitioner submit to a chemical test of his breath, the second time requesting a chemical test of his blood. Both times, Trooper Brown read the implied consent warnings very rapidly, and both times he omitted the number “eight” from the reading of the legal BAC. Thus, it appeared that Brown was telling Petitioner that the minimum BAC was “Zero-Point-Zero Grams,” not the correct legal limit of “Zero-Point-Zero-Eight Grams.” Although Trooper Brown testified on rebuttal that he actually included the number “8” during both readings of the warnings, the court has reviewed the audio and video recording of both readings from the Implied Consent Warnings card several times, and the number “8” was not read aloud in a manner that Petitioner could have understood.

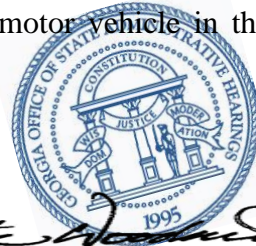
### III. Conclusions of Law and Decision

The evidence produced at the administrative hearing shows that the Implied Consent Warnings were not correctly read on the scene of the initial stop and arrest, because the number “8” was omitted from the actual legal limit of 0.08 grams. This would mean that any blood alcohol concentration revealed following the chemical test of a suspects breath or blood (and, for urine, although Trooper Brown did not request a urine sample) could result in an administrative suspension of Petitioner’s driver’s license, permit, or privilege.

“The determinative issue with the implied consent notice is whether the notice given was substantively accurate so as to permit the driver to make an informed decision about whether to consent to testing.” State v. Chun, 265 Ga. App. 530, 531 (2004). In this case, omitting the “8” from the BAC stated on the card is a substantial inaccuracy, and therefore the two readings did not properly inform Petitioner of his implied consent rights.

Based upon the above Findings of Fact, Respondent failed to meet its burden of proof on all provisions required for the administrative license suspension or disqualification of the Petitioner. O.C.G.A. § 40-5-67.1(g)(2); Ga. Comp. R. & Regs. 616-1-2-.07(1). Accordingly, it is hereby **ORDERED** that Respondent’s decision to administratively suspend 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 13th day of December, 2022.



**M. Patrick Woodard**  
**Administrative Law Judge**