

STATE OF MAINE
KENNEBEC, ss

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. AP-07-66
111-201-617-3

GRANVILLE H. STORER, JR.
v.

DECISION AND ORDER

Petitioner

SECRETARY OF STATE, BUREAU
OF MOTOR VEHICLES

Respondent

RONALD L. GARBRECHT
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JUL 18 2007

Pursuant to M.R. Civ. P. 80C, the petitioner seeks judicial review of the respondent's final agency action. The hearing officer upheld the respondent's suspension of his driver's license and commercial driver's license for a period of 18 months. R. Tab 5; 29-A M.R.S.A. §§ 2453 & 1253(2). For the following reasons, the respondent's decision is affirmed.

On July 3, 2007, at 10:10 p.m. on Route 27 in Pittston, Trooper Christopher stopped a vehicle because a headlight was not working. The driver, the petitioner, stated he was on his way home from a celebration. He admitted he had one beer at approximately 6:30 p.m. Trooper Rogers smelled the odor of intoxicants from petitioner's facial area. R. Tab 7 at 5-7.

A Horizontal Gaze Nystagmus (HGN) test was administered. Trooper Rogers and later Trooper Madore observed four of six clues. During the walk and turn test, the petitioner did not walk heel to toe on several steps while walking out and returning. During the one-leg stand test, the petitioner lost his balance after eighteen seconds and put his leg down after twenty seconds. An intoxilyzer test was administered. The

petitioner's actual test results were .095% at 10:47 p.m. and .082% at 10:50 p.m., averaged to a .08%. R. Tab at 7-9; 25; Ex. 2.

At the hearing, the petitioner presented the affidavit of Robert Morgner. R. Tab 7, Ex. 5. In the affidavit, Mr. Morgner stated that for "a .08% test result the range of error is plus or minus .022% for a test range of .058% to .102%. R. Tab 7, Ex. 2 at 2. The Hearing Examiner noted that the facts of the case were not applied to the potential test range. R. Tab 5 at 1.

The petitioner argues that substantial evidence does not exist in the record to support the finding that petitioner had a blood alcohol content of .08% or more. "A party seeking review of an agency's findings must prove they are unsupported by any competent evidence." Maine Bankers Ass'n v. Bureau of Banking, 684 A.2d 1304, 1306 (Me. 1996). "Inconsistent evidence will not render an agency decision unsupported." Seider v. Board of Examiners of Psychologists, 2000 ME 206, ¶ 9, 762 A.2d 551, 555 (citation omitted). The use of the HGN and other tests to "precisely quantify blood alcohol content is improper."¹ State v. Taylor, 1997 ME 81, ¶ 13, 694 A.2d 907, 912. This record provides competent evidence, including the actual intoxilyzer test results, to support the respondent's finding.

The entry is

The Respondent's Decision is AFFIRMED.

Date: June 17, 2008



Nancy Mills
Justice, Superior Court

¹ "[T]he proper way to test for an *exact* blood alcohol level is by chemical analysis of blood, breath or urine." State v. Taylor, 1997 ME 81, ¶ 13, 694 A.2d 907, 912.

Date Filed 10/11/07 Kennebec County Docket No. AP07-66

Action Petition for Review
80C

J. Mills

Granville H. Storer, Jr. vs. Sec. of State, Bureau of Motor Vehicle

Plaintiff's Attorney
Benjamin J. Smith, Esq.
227 Water Street
P.O. Box 1051
Augusta, Maine 04332-1051

Defendant's Attorney
Gwendolyn Thomas, Esq. AAG
6 State House Station
Augusta, Maine 04333

Date of Entry	
10/11/07	Petition for Review of Final Agency Action, filed. s/Smith, Esq.
10/18/07	Petitioners Motion for Stay Pursuant to 5 M.R.S.A. 11004, Exhibit A and Order filed by B Smith.
10/23/07	10/22/07: Appearance entered on behalf of Respondent the Secretary of State, Bureau of Motor Vehicle. filed by G Thomas AAG
11/2/07	10/31/07: Affidavit of Service by restricted delivery, return receipt request served on the Respondent on October 12, 2007 and filed by B. Smith on 10/31/07
11/13/07	11/9/07: Order: After hearing this court hereby denied Petitioners Motin for Stay. Judge Marden Copies mailed to parties
11/19/07	11/15/07: Respondents motion to extend time to file opposition to Motion for Stay filed by W Thomas AAG
11/16/07	Certified Record, filed. s/Thomas, AAG Notice and Briefing Schedule mailed to attys. of record.
12/11/07	Respondent's Motion To Extend Time To File Opposition To Motion For Stay, withdrawn per phone call with Gwendolyn Thomas, AAG
12/21/07	Petitioner's Unopposed Motion To Enlarge Time Within Which To File Petitioner's Brief, filed. s/Smith, Esq.
12/27/07	ORDER, Mills, J (12/26/07) Petitioner must file brief by 1/14/08. Copy to attorneys.
2/14/08	Petitioner's Brief On Appeal Of The Decision Of The Bureau Of Motor Vehicles' Dated September 18, 2007, filed 1/11/08. s/Smith, Esq.
2/14/08	Brief Of Respondent Secretary Of State, Bureau Of Motor Vehicles, filed 2/12/08. s/Thomas, AAG

Date of
Entry

Docket No. _____

3/6/08

Letter requesting hearing on Petition For Review, filed 3/3/08.
s/Smith, Esq.

3/21/08

Petitioner's Reply Brief To Brief Of Respondent Secretary Of State
Bureau Of Motor Vehicles, filed 3/20/08. s/Smith, Esq.

~~6/12/08~~

~~Motion For Dismissal Of Case, Filed 6/9/08, s/Smith, Esq.~~

~~6/12/08~~

~~Motion To Withdraw, Filed 6/9/08, s/Smith, Esq.~~

6/17/08

DECISION AND ORDER, Mills, J.

The Respondent's Decision is AFFIRMED.

Copy mailed to attorneys of record.

Copy mailed to Deborah Firestone, Garbrecht Law Library, and Donald
Goss.