

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA**

FATINE LAMNAOUER,

CASE NO.: 2012-CA-012515-O

Petitioner,

WRIT NO.: 12-66

v.

**STATE OF FLORIDA, DEPARTMENT
OF HIGHWAY SAFETY AND MOTOR
VEHICLES, BUREAU OF DRIVER
IMPROVEMENT,**

Respondent.

Petition for Writ of Certiorari
from the Florida Department of
Highway Safety and Motor Vehicles,
Ronald Barnes, Hearing Officer.

Stuart I. Hyman, Esquire,
for Petitioner.

Kimberly A. Gibbs, Assistant General Counsel,
for Respondent.

BEFORE MCDONALD, LAUTEN, and ARNOLD, J.J.

PER CURIAM.

FINAL ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioner, Fatine Lamnaouer (“Lamnaouer”) timely filed this petition seeking certiorari review of the Florida Department of Highway Safety and Motor Vehicles’ (“Department”) Final Order of License Suspension. Pursuant to section 322.2615, Florida Statutes, the Order sustained the suspension of her driver’s license. This Court has jurisdiction under section 322.2615(13), Florida Statutes, and Florida Rule of Appellate Procedure 9.030(c)(3). We dispense with oral argument. Fla. R. App. P. 9.320.

Findings of Fact

As gathered from the Hearing Officer's findings of fact, the ICJIS Arrest Affidavit, Statement, the FDLE Laboratory Report, and other related documents presented at the formal review hearing on June 29, 2012, the facts are summarized as follows: On January 15, 2012 at approximately 8:35 p.m., Officers Gutierrez and Adams of the Orlando Police Department responded to the scene of a two-vehicle crash. Officer Gutierrez conducted a crash investigation and determined that Lamnaouer was at fault in the crash, striking the rear of the other vehicle. Lamnaouer was identified as the driver and sole occupant of the vehicle by a witness to the crash, Nathan Watson, and by Orlando Fire Department personnel.

Officer Adams made independent contact with Lamnaouer while she was being treated and observed the odor of alcohol impurities coming from her person. Officer Adams also observed that Lamnaouer's speech was thick and her eyes were bloodshot. Lamnaouer was then transported to the hospital. Upon receiving the results of the crash investigation from Officer Gutierrez, Officer Adams then re-established contact with Lamnaouer at the hospital where he observed airbag burns on her inside forearm area. Officer Adams informed Lamnaouer that Officer Gutierrez found her to be at fault in the crash and that based on his, Officer Adams', observations, he was now conducting a criminal investigation for DUI. Officer Adams informed Lamnaouer of the Implied Consent Warning and requested that she consent to a blood draw. Lamnaouer consented to the blood draw and two tubes of blood were drawn from her. Crime Laboratory Analyst Gina Connelly performed an analysis on the blood samples and released the results of .170 and .172 on February 27, 2012. Officer Adams completed the Arrest Affidavit on March 1, 2012 and Lamnaouer was issued a post-dated notice of license suspension effective March 29, 2012 for driving with an unlawful blood-alcohol level.

Standard of Review

“The duty of the circuit court on a certiorari review of an administrative agency is limited to three components: Whether procedural due process was followed, whether there was a departure from the essential requirements of law, and whether the administrative findings and judgment were supported by competent substantial evidence.” *Dep’t of Highway Safety & Motor Vehicles v. Satter*, 643 So. 2d 692, 695 (Fla. 5th DCA 1994). “It is neither the function nor the prerogative of a circuit judge to reweigh evidence and make findings [of fact] when [undertaking] a review of a decision of an administrative forum.” *Dep’t of Highway Safety & Motor Vehicles v. Allen*, 539 So. 2d 20, 21 (Fla. 5th DCA 1989).

In a formal review of an administrative suspension, the burden of proof is on the State, through the Department. Where the driver’s license was suspended for driving with an unlawful blood-alcohol level or breath-alcohol level, the hearing officer must find that the following elements have been established by a preponderance of the evidence:

1. Whether the law enforcement officer had probable cause to believe that the person whose license was suspended was driving or in actual physical control of a motor vehicle in this state while under the influence of alcoholic beverages or chemical or controlled substances.
2. Whether the person whose license was suspended had an unlawful blood-alcohol level or breath-alcohol level of 0.08 or higher as provided in s. 316.193.

§ 322.2615(7)(a), Fla. Stat. (2012).

Arguments

In the Petition, Lamnaouer argues: 1) There was no evidence in the record to establish that her blood was drawn by an individual who was statutorily authorized to draw blood; 2) The blood test results are inadmissible based upon the failure of the Department to establish that the blood samples were collected, labeled, and stored in compliance with FDLE Rule 11D-8.012;

and 3) There was no probable cause to require her to submit to the blood test. Conversely, the Department argues that the Hearing Officer's decision sustaining Lamnaouer's license suspension conforms to the essential requirements of the law and is supported by competent substantial evidence.

Analysis

Lamnaouer's first and second arguments addressing the person who administered the blood draw and the collection, labeling, and storage of the blood: At the hearing, Lamnaouer's counsel moved to invalidate the suspension arguing that the person who drew the blood was not identified and that such identification is required to prove compliance with the FDLE rules and Florida Statutes. Lamnaouer's counsel also provided criminal cases in support of this argument. The Hearing Officer denied the Motion finding that neither section 322.2615, Florida Statutes, or the administrative rules state that the person who draws the blood must be identified by name except for when a health care provider informs the officer voluntarily of blood test results indicating impairment. Further, the Hearing Officer noted that while the statutes do specify who may draw blood under FDLE rules, Lamnaouer's counsel provided no evidence of non-compliance with the rules or statutes. The Hearing Officer also stated that in the instant case, the blood draw was performed at a hospital; thus, it may be reasonably assumed that only a person qualified under the statutes would conduct the blood draw and Lamnaouer's counsel provided no evidence that the person who drew the blood was not qualified to do so. Lastly, the Hearing Officer pointed out that the criminal case law provided by counsel was not persuasive in the instant case.

Lamnaouer's counsel also moved to invalidate the suspension based on the absence of FDLE/ATP Form 11, which is a certification of blood withdrawal and argued that without this

document, there is no certification that all procedures for the blood draw were followed in accordance with the rules and statutes. The Hearing Officer also denied that Motion finding that none of the statutes or rules applicable to this administrative proceeding specifically require this form, but instead, only require that the procedures be followed and Lamnaouer's counsel provided no evidence that these procedures were not followed.

Per section 322.2615(2), Florida Statutes, the documents that law enforcement officers must forward to the Department for review of a license suspension for driving with an unlawful blood-alcohol level are: the driver's license; an affidavit stating the officer's grounds for belief that the person was driving or in actual physical control of a motor vehicle while under the influence of alcoholic beverages or chemical or controlled substances; the results of any breath or blood test; the officer's description of the person's field sobriety test, if any; and the notice of suspension. Section 322.2615(11), Florida Statutes, provides that the formal review hearing may be conducted upon a review of the reports of a law enforcement officer or a correctional officer, including documents relating to the administration of a breath or blood test and that the driver may subpoena the officer or any person who administered or analyzed a breath or blood test. Rule 15A-6.013(2), Florida Administrative Code, provides that the Hearing Officer may consider any report submitted by a law enforcement officer, correctional officer, or such agency relating to the administration or analysis of a breath or blood test.

This Court finds that per the applicable statutes and rule, the Hearing Officer may, but is not required, to consider evidence pertaining to the administration of a blood test including identity of the person who drew the blood and the information about the collection, labeling, and storage of the blood prior to testing it. Thus, the Hearing Officer in this case correctly following the law and the documents provided for the formal review hearing, specifically the Arrest

Affidavit, Statement, and the FDLE Laboratory Report/Blood Test Result Affidavit from the blood test provided competent substantial evidence in support of the Hearing Officer's findings and decision.

Lamnaouer's third argument that there was no probable cause to require her to submit to the blood test: Also, at the hearing Lamnaouer's counsel moved to invalidate the suspension based on a lack of indicia of impairment to request a blood draw as the odor of alcohol came from Lamnaouer's person, not her mouth or facial area, and thick speech and bloodshot eyes are insufficient to request the blood test. The Hearing Officer denied the Motion finding that Officer Adams' articulated indicia of impairment, including Lamnaouer's running into the rear of another vehicle, provided just cause to request a blood draw.

This Court finds that the crash combined with Officer Adams' observations of Lamnaouer including the odor of alcohol impurities coming from her person, her thick speech, and bloodshot eyes provided competent substantial evidence in support of the Hearing Officer's findings that the request for the blood draw was lawful.

Conclusion

Based on the foregoing, this Court finds that Lamnaouer was provided due process and the Hearing Officer's decision to sustain her license suspension did not depart from the essential requirements of the law and was based on competent substantial evidence. Because the scope of this Court's review is limited to determining whether competent substantial evidence existed in support of the Hearing Officer's findings and decision, this Court's review cannot go further to reweigh the evidence presented and as long as the record contains competent substantial evidence to support the agency's decision, the decision is presumed lawful and this Court's job is

ended. *Dusseau v. Metropolitan Dade County Board of County Commissioners*, 794 So. 2d 1270, 1276 (Fla. 2001).

Accordingly, it is hereby **ORDERED AND ADJUDGED** that Petitioner, Fatine Lamnaouer's Petition for Writ of Certiorari is **DENIED**.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, on this 12th day of March, 2014.

/S/ _____
ROGER J. MCDONALD
Presiding Circuit Judge

LAUTEN and ARNOLD, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished to: **Stuart I. Hyman, Esquire**, Stuart I. Hyman. P.A., 1520 East Amelia Street, Orlando, Florida 32803, and **Kimberly A. Gibbs, Assistant General Counsel**, Dept. of Highway Safety and Motor Vehicles, P.O. Box 570066, Orlando, Florida 32857, on this 12th day of March, 2014.

/S/ _____
Judicial Assistant