

4-21-2015

Bezdicek v. Idaho Transp. Dept. Respondent's Brief Dckt. 42608

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Lawrence G. Wasden
Attorney General

Edwin L. Litteneker
Special Deputy Attorney General
Idaho Transportation Department
PO Box 321
Lewiston, Idaho 83501
Telephone: (208) 746-0344
ISB No. 2297

IN THE SUPREME COURT
OF THE
STATE OF IDAHO

BRYAN ALLEN BEZDICEK, JR.,)	SUPREME COURT NO. 42608
)	
Plaintiff-Appellant,)	
)	
v.)	
)	
STATE OF IDAHO,)	
TRANSPORTATION DEPARTMENT,)	
)	
Respondent.)	
_____)	

RESPONDENT'S BRIEF

APPEAL FROM SECOND JUDICIAL DISTRICT, NEZ PERCE COUNTY

THE HONORABLE JAY P. GASKILL, PRESIDING

Edwin L. Litteneker
Special Deputy Attorney General
322 Main Street
Lewiston, ID 83501
(208) 746-0344

Attorney for Respondent

Jonathan D. Hally
Blewett Mushlitz, LLP
710 16th Avenue
Lewiston, Idaho 83501
(208) 413-6678

Attorney for Appellant

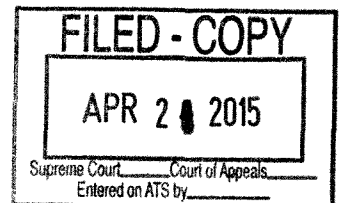


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I. STATEMENT OF THE CASE

a. Nature of the Case.

This is an Appeal of the District Court's decision that an Idaho Transportation Department Hearing Examiner had correctly determined that Mr. Bezdicek had not met his burden to demonstrate a basis existed under I.C. § 18-8002A(7) to set aside the Department's Administrative License Suspension of Mr. Bezdicek's driving privileges.

b. Party References.

The Idaho Transportation Department is referred to as the "Department" for purposes of this argument. Mr. Bezdicek is specifically referred to by name. Where "driver" is used, it is in reference to drivers generally.

c. Reference to the Administrative Record.

The references to the Department's Administrative Record are made to the Appellate Record page number not the Administrative Record page number. The Transcript of the Department's Administrative hearing is included in the Record on Appeal as an exhibit. The transcript of that hearing is referred to as the Administrative License Suspension Transcript (ALS Tr.) by page and number.

d. Factual Statement and Procedural History.

On March 18, 2014 at 0230 hours Lewiston Police Officer Lawrence Mowery was sitting stationary in the 100 block of Main Street monitoring traffic. Officer Mowery observed a small Chevy vehicle traveling southbound on First St onto Main Street heading eastbound. The vehicle was driving without its headlights on. Officer Mowery activated his overhead lights and stopped the vehicle in the 200 block of Main Street.

Upon making contact with the driver later identified as Bryan Bezdicek, Officer

Mowery noticed Mr. Bezdicek's eyes to be bloodshot and watery. Officer Mowery asked Mr. Bezdicek how many drinks he had to which Mr. Bezdicek responded, "a couple of beers" and that the last one was drank within the hour. Mr. Bezdicek also replied that his passenger had too much to drink.

Officer Mowery asked Mr. Bezdicek to step out of the vehicle and conduct field sobriety tests to see if he was okay to be driving. Mr. Besdicek performed the Horizontal Gaze/Nystagmus test, the Two-Walk and Turn and the Three-One Leg Stand. Mr. Bezdicek failed the field sobriety tests and Office Mowery placed him under arrest for driving under the influence of alcohol (R. p. 37).

Officer Mowery transported Mr. Bezdicek to the Nez Perce County Jail for evidentiary breath testing. Officer Mowery conducted the 15 minute waiting period and played the ALS notification for Mr. Bezdicek (R. p. 38).

Mr. Bezdicek submitted to an evidentiary breath alcohol test with results of .155 and .147 (R. p. 38).

Mr. Bezdicek timely requested a hearing with the Idaho Department of Transportation's administrative Hearing Examiner (R. pp. 45-48).

A hearing was held telephonically on April 17, 2014 (R. p. 71). The Department's Hearing Examiner entered Findings of Fact, Conclusions of Law and Order sustaining the suspension of Mr. Bezdicek's driving privileges (R. pp. 84-100).

Mr. Bezdicek timely filed a Petition for Judicial Review and the suspension of his driving privileges was stayed during the District Court's review (R. pp. 101-103).

After entertaining briefing and Oral Argument, the District Court upheld the Hearing Examiner's determination that Mr. Bezdicek failed to meet his burden pursuant to

I.C. § 18-8002A(7) (R. pp. 183-191).

Mr. Bezdicek timely filed his Notice of Appeal of the District Court's decision. The suspension of Mr. Bezdicek's driving privileges have been stayed pending the conclusion of the Court's judicial review.

II. ISSUES ON APPEAL

Mr. Bezdicek identifies two issues on appeal. For purposes of the Department's response, the issues are characterized as follows:

Issue 1: Whether legal cause exists to believe Mr. Bezdicek was operating a motor vehicle under the influence of alcohol, drugs or intoxicating substances.

Issue 2: Whether good cause exists for the Hearing Examiner's extension of the date of the hearing.

Mr. Bezdicek does not appear to characterize the issues for the Court review consistent with his burden pursuant to I.C. § 18-8002A(7). However, giving Mr. Bezdicek the benefit of the doubt and for purposes of this argument the existence of "legal cause" is addressed as an issue pursuant to I.C. § 18-8002A(7)(b).

Mr. Bezdicek raises no challenge to the Hearing Examiner's decision that Mr. Bezdicek has failed to meet his burden pursuant to I.C. § 18-8002A(7)(a & c-e). Any issue which could have been raised pursuant to I.C. § 18-8002A(7)(a & c-e) has been waived. *Kugler v. Drowns*, 119 Idaho 687, 809 P.2d 1116 (1991), *Wheeler v. IDHW*, 147 Idaho 257, 207 P.3d 988, 996 (2009).

III. STANDARD OF REVIEW

Idaho Code § 18-8002A(7) sets out the burden of the driver to demonstrate to the Hearing Officer that driving privileges should be reinstated because:

- (a) The peace officer did not have legal cause to stop the person; or
- (b) The officer did not have legal cause to believe the person had been driving or was in actual physical control of a vehicle while under the influence of alcohol, drugs or other intoxicating substances in violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code; or;
- (c) The test results did not show an alcohol concentration or the presence of drugs or other intoxicating substances in violation of section 18-8004, 18-8004C or 18-8006, Idaho Code; or
- (d) The tests for alcohol concentration, drugs or other intoxicating substances administered at the direction of the peace officer were not conducted in accordance with the requirements of section 18-8004(4), Idaho Code, or the testing equipment was not functioning properly when the test was administered; or
- (e) The person was not informed of the consequences of submitting to evidentiary testing as required in subsection (2) of this section.

The burden of proof rests on the driver to prove any of the grounds to vacate the suspension of I.C. § 18-8002A(7), *Kane v. State, Dept. of Transp.*, 139 Idaho 586, 83 P.3d 130 at 143 (Ct. App. 2003).

The review of disputed issues of fact must be confined to the agency record for judicial review, I.C. § 67-5277.

Idaho Code § 67-5279(1) sets out the scope of review. “The Court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.” *Howard v. Canyon County Bd. of Com'rs*, 128 Idaho 479, 915 P.2d 709 (1996).

Idaho Code § 67-5279(3) provides:

When the agency was required by the provisions of this chapter or by other provision of law to issue an order, the court shall affirm the agency action unless the court finds that the agency’s findings, inferences, conclusions or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) not supported by substantial evidence on the record as a whole; or
- (e) arbitrary, capricious, or an abuse of discretion.

The appropriate remedy pursuant to the Idaho Administrative Procedures Act is: “. . . if the agency action is not affirmed, it shall be set aside, in whole or in part and remanded for further proceedings as necessary.” Idaho Code § 67-5279(3).

The decision of the Transportation Department must be affirmed unless the order violates statutory or constitutional provisions, exceeds the agency’s authority, is made upon unlawful procedure, is not supported by substantial evidence or is arbitrary, capricious or an abuse of discretion. *Marshall v. Department of Transp.*, 137 Idaho 337, 48 P.3d 666 (2002). The party challenging the agency decision must demonstrate that the agency erred in a manner specified in I.C. § 67-5279(3) and that a substantial right of that party has been prejudiced. *Druffel v. State, Dept. of Transp.*, 136 Idaho 853, 41 P.3d 739 (2002).

Appellate review of the District Court’s decision requires the Court to review “the agency record independently of the District Court’s decision”, *Marshall v. Dept. of Transp.* 137 Idaho 337, 340, 48 P.3d 666,669 (Ct. App. 2002).

IV. ARGUMENT

ISSUE 1

Whether legal cause exists to believe Mr. Bezdicek was operating a motor vehicle under the influence of alcohol, drugs or intoxicating substances.

Mr. Bezdicek characterized the issue for the Court as whether legal cause exists to arrest Mr. Bezdicek and to require Mr. Bezdicek to submit to evidentiary testing. Such an issue is not before the Department’s Hearing Examiner. The Hearing Examiner is to

consider whether Mr. Bezdicek has met his burden to show that legal cause does not exist for the stop of Mr. Bezdicek's vehicle, I.C. § 18-8002A(7)(a) or to believe that Mr. Bezdicek was operating a motor vehicle under the influence, I.C. § 18-8002A(7)(b).

Pursuant to I.C. § 18-8002A(7)(a) Mr. Bezdicek has the obligation to demonstrate that legal cause to stop Mr. Bezdicek's vehicle did not exist. Mr. Bezdicek does not characterize this issue as legal cause to stop but instead characterizes the issue as to the existence of legal cause to arrest.

Clearly there is legal cause for Officer Mowery to stop Mr. Bezdicek's vehicle. There is no dispute that Officer Mowery observed Mr. Bezdicek's vehicle without its headlights. The Hearing Examiner makes careful findings about the presence of legal cause to stop Mr. Bezdicek's vehicle. (FN Findings of Fact, Conclusions of Law and Order 1.1-1.4 R. pp. 11-12). Mr. Bezdicek does not disagree that he was operating his motor vehicle without headlights.¹

Mr. Bezdicek correctly states the standard to review the actions of Officer Mowery as legal cause but then employs an inappropriate probable cause analysis. The existence of legal cause to arrest Mr. Bezdicek is simply not an issue before the Hearing Examiner in this setting. Whether a seizure occurs in the context of a criminal prosecution is not an

1

- 1.1 On March 18, 2014, at approximately 2:30 a.m., Officer Mowery was sitting stationary in the 100 block of Main Street in Nez Perce County, Idaho, when he witnessed Bezdicek's vehicle traveling southbound on First Street onto Main Street heading eastbound without activated headlights.
- 1.2 I.C. § 49-903 provides that every vehicle upon a highway at any time from sunset to sunrise and at any other time when there is not sufficient light to render clearly discernible persons and vehicles on the highway at a distance of 500 feet shall display lighted lamps.
- 1.3 Bezdicek's vehicle was in violation of I.C. § 49-903.
- 1.4 Officer Mowery possessed legal cause for the stop of Bezdicek's vehicle.

Findings of Fact and Conclusions of Law and Order, R. pp. 11-12.

issue in the Administrative License Suspension setting, I.C. §18-8002A(7).²

Whether there are some facts which cause a reasonable suspicion to be dispelled in the criminal setting eliminating probable cause to arrest is simply not a question before the Hearing Examiner pursuant to I.C. §18-8002A(7).

Additionally, Mr. Bezdicek has the burden to show that Officer Mowery did not have legal cause to believe that Mr. Bezdicek was operating a motor vehicle under the influence of alcohol, drugs or other intoxicating substances, I.C. § 18-8002A7(b).

² Whether an unreasonable search and seizure occurred is clearly not an inquiry for the Department's Hearing Examiner. Clearly the Administrative License Suspension is intended to be a civil process entirely separate and removed from the criminal prosecution which may arise from a failed evidentiary test for alcohol concentration. A suppression of evidence in the criminal case would not mean Mr. Bezdicek met his burden to show that legal cause did not exist in the Administrative License Suspension case, I.C. § 18-8002A(7).

The legal cause standard has been clear in the Administrative License Suspension setting since the Court of Appeals decision *In re Suspension of Driver's License of Gibbar*, 143 Idaho 937, 155 P.3d 1176 (Ct. App. 2006).³

Mr. Bezdicek also inappropriately asks that the Court weigh the evidence differently than the Hearing Examiner (see for example Mr. Bezdicek's Opening Brief p. 7 LL. 8-13). Clearly the Court's role on judicial review is to determine whether there is a sufficient basis in the record to support the Hearing Examiner's decision, not to substitute its judgment for that of the Hearing Examiner, I.C. § 67-5279(1), *Woodfield v. Bd of Professional Discipline*, 127 Idaho 738, 905 p.2d 1047 (Ct. App. 1995), *Bennett v. State*, 147 Idaho 141, 206 P3d 505 (Ct. App. 2009). The question for the Department's Hearing Examiner is whether Mr. Bezdicek has met his burden to demonstrate that legal cause did not exist to stop Mr. Bezdicek's vehicle or for Officer Mowery's belief that Mr. Bezdicek was under the influence of drugs, alcohol or intoxicating drugs.

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The reasonable suspicion standard requires less than probable cause but more than mere speculation or instinct on the part of the officer. *Id.* An officer may draw reasonable inferences from the facts in his or her possession, and those inferences may be drawn from the officer's experience and law enforcement training. *State v. Montague*, 114 Idaho 319, 321, 756 P.2d 1083, 1085 (Ct.App.1988). Suspicion will not be found to be justified if the conduct observed by the officer fell within the broad range of what can be described as normal driving behavior. *Atkinson*, 128 Idaho at 561, 916 P.2d at 1286.

In re Suspension of Driver's License of Gibbar, 143 Idaho 937, 155 P.3d 1176 (Ct. App. 2006)

Clearly, the question for the Hearing Examiner is not whether legal cause exists to request Mr. Bezdicek to submit to evidentiary testing. Here the Hearing Examiner again makes complete and thorough findings as to the existence of legal cause to believe that Mr. Bezdicek was operating a motor vehicle under the influence of drugs, alcohol or intoxicating substances.⁴

Additionally, Mr. Bezdicek does not indicate that the record does not support the Hearing Examiner's Findings and Conclusions.

The question for the Hearing Examiner is not whether a field sobriety test was passed or failed. The question for the Hearing Examiner to consider the entirety of the circumstances at the time of Officer Mowery's contact with Mr. Bezdicek to determine if Officer Mowery had a reasonable articulable suspicion that Mr. Bezdicek was under the influence of alcohol, *Gibbar* (see FN 2).

Mr. Bezdicek does not dispute Officer Mowery's observations as to Mr. Bezdicek's

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2.

Did Officer Mowery Possess Legal Cause for Bryan Bezdicek's Arrest, Legal Cause to Believe Bezdicek was Driving While Under the Influence of Alcohol in Violation of Idaho Code §18-8004, and Legal Cause to Request Bezdicek Submit to Evidentiary Testing?

- 2.1 Bezdicek's driving and actual physical control of the motor vehicle was established by the observation of Officer Mowery.
- 2.2 Competent evidence of Bezdicek's impairment:
 - a. Smelled moderately of an alcoholic beverage
 - b. Admitted drinking alcoholic beverages-couple of beers
 - c. Difficulty focusing
 - d. Impaired memory
 - e. Watery eyes
 - f. Bloodshot eyes
 - g. Difficulty following instructions
 - h. Swaying
- 2.3 Bezdicek met or exceeded the minimum decision pointes on the following standardized field sobriety test:
 - a. Horizontal Gaze Nystagmus (HGN)

Findings of Fact and Conclusions of Law and Order-6 (R. p. 89).

condition. Mr. Bezdicek only offers an alternative explanation for Mr. Bezdicek appearing under the influence. Again, the question for the Hearing Examiner is not whether Mr. Bezdicek is under the influence, the question is whether there was a reasonable basis for Officer Mowery's belief that Mr. Bezdicek was under the influence, *Gibbar, id.* The Hearing Examiner sets out specifically the factual basis to conclude legal cause exists for Trooper Mowery's belief that Mr. Bezdicek was operating a motor vehicle under the influence of alcohol (FFCLO 2.2, 2.3, 2.7, 2.13 R. pp. 12-13).⁵

Mr. Bezdicek only addresses the field sobriety tests and not the other observations of Officer Mowery. The Hearing Examiner analyzes the circumstances of detention (albeit gratuitously), the admission of the consumption of alcoholic beverages and the smell of alcoholic beverages, concluding that Officer Mowery had a reasonable articulable suspicion for his belief that Mr. Bezdicek was operating a motor vehicle under the influence of alcohol (R. p. 12).

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- 2.2 Competent evidence of Bezdicek's impairment:
 - a. Smelled moderately of an alcoholic beverage
 - b. Admitted drinking alcoholic beverages-couple of beers
 - c. Difficulty focusing
 - d. Impaired memory
 - e. Watery eyes
- 2.3 Bezdicek met or exceeded the minimum decision points on the following standardized field sobriety test:
 - a. Horizontal Gaze Nystagmus (HGN)
- 2.7 Upon review of the narrative report, oral testimony and as set forth in Finding #2 above, Officer Mowery has clearly articulated 8 indicators of impairment/intoxification, thus leading to sufficient legal cause to request evidentiary testing.
- 2.13 Although Bezdicek displayed no suspicious driving and passed two of the three standardized field sobriety tests, the smelling moderately of an alcoholic beverage, the admission of consuming alcoholic beverages, exhibiting impaired memory, having difficulty focusing and following instructions, displaying water and bloodshot eyes, and swaying while standing are not the norm nor expected condition of an ordinary and prudent vehicle driver who operates a motor vehicle in the normal course of everyday driving.

Findings of Fact, Conclusions of Law and Order, R. pp. 12-13

Since Mr. Bezdicek argues that probable cause is lacking to arrest him and that an apparently insufficient factual basis exists for Officer Mowery's request that Mr. Bezdicek submits to an evidentiary test, it is difficult to determine how it is that Mr. Bezdicek met his burden to show either that Officer Mowery did not have legal cause for the stop of Mr. Bezdicek's vehicle or that a reasonable articulable suspicion does not exist for Officer Mowery's belief that Mr. Bezdicek was operating a motor vehicle under the influence of alcohol.

Mr. Bezdicek simply fails to demonstrate that the Hearing Examiner's findings and conclusions that Mr. Bezdicek failed to meet his burden are not supported by sufficient evidence in the Record considered as a whole.⁶

ISSUE 2

Whether good cause exists for the Hearing Examiner's extension of the date of the hearing.

Mr. Bezdicek argues that the hearing was held in violation of I.C. § 18-8002A based upon the Hearing Examiner's sua sponte determination that good cause existed to extend the date of the administrative hearing, without providing any authority for his analysis.

The original Notice of Suspension was issued to Mr. Bezdicek on March 18, 2014. The thirty days of temporary driving privileges as provided in the original Notice of Suspension were to expire April 17, 2014 (R. p. 31).

On March 24, 2014, the Hearing Examiner scheduled Mr. Bezdicek's hearing to take place by telephone conference call on April 17, 2014 (R. pp. 53-54). Also on March

⁶ Mr. Bezdicek does not characterize his argument in the context of I.C. § 67-5279(3). The Hearing Examiner's decision here is not based on an unlawful procedure, I.C. § 67-5279(3)(c) and is not an abuse of discretion, I.C. § 67-5279(3)(e).

24, 2014 the Hearing Examiner issues a *show cause* letter indicating that hearing date had been extended to April 17, 2014 to allow time for the receipt of subpoenaed information requested by Mr. Bezdicek (R. p. 43).⁷

Additionally, on March 24, 2014 the Hearing Examiner at Mr. Bezdicek's request issued subpoenas and subpoena duces tecums with a production date of April 7, 2014 (R. pp. 51-52).

⁷ The Department issued what is termed a "show cause" letter. The title of the letter is unfortunate, however, Mr. Bezdicek's show cause letter does not require that Mr. Bezdicek "show cause." Instead the letter notifies Mr. Bezdicek that the date of the hearing has been extended to permit the receipt of subpoenaed evidence requested by Mr. Bezdicek and in spite of its title, is clearly the Hearing Examiner's determination that good cause exists to extend the hearing date to accommodate the requested discovery.

The Hearing Examiner extended the hearing date so that the discovery requested by Mr. Bezdicek would be available prior to the administrative hearing. The Hearing Examiner clearly and with substantial detail sets out the basis for his determination that good cause exists to extend the hearing date, see Findings 7.1-7.39 (R. pp. 16-21).⁸

Mr. Bezdicek argues that the remaining 67 days suspension (the effective date of the suspension was April 17, 2014 expiring on July 16, 2014 and entered on April 30, 2014) should be vacated because the Department did not timely schedule the Administrative License Suspension within 30 days of the date of the Notice of Temporary Driving Privileges.⁹

⁸Specifically the Hearing Examiner finds:

- 7.6 To allow time for the receipt of the subpoenaed evidence as requested by the petitioner, the Hearing Examiner extended the hearing March 24, 2014, and the Department scheduled the hearing to April 17, 2014, 24 days following the Request for Hearing, within the 10-day extension period, and the 30 day time frame as mandated by statute.
- 7.7 On March 24, 2014, the Hearing Officer issued subpoenas' for all relevant persons and documents setting forth a compliance date of April 7, 2014.
- 7.8 The Department routinely allows three days for service of the subpoena and ten days for production of the requested evidence.
- 7.13 The ultimate decision to extend a license suspension hearing is at the discretion of the hearing officer, and is not contingent upon a specific request from the petitioner.
- 7.15 Due to the request for additional discovery outside the statutorily mandated documents, the Hearing Examiner determined good cause existed for the 10 day extension to allow for receipt of requested subpoena evidence, forwarding of the evidence, and review of the evidence.
- 7.16 Consequently, the Hearing Examiner extended the allowable hearing time frame for one ten day period allowing the hearing to be held within 30 days or April 21, 2014, at the latest.

Findings of Fact, Conclusions of Law and Order, R. pp. 17-18.

⁹ Idaho Code § 18-8002A provides:

If a hearing is requested, the hearing shall be held within twenty (20) days of the date the hearing request was received by the department unless this period is, for good cause shown, extended by the hearing officer for one ten (10) day period. Such an extension shall not operate as a stay of the suspension, notwithstanding an extension of the hearing date beyond such thirty (30) day period.

Mr. Bezdicek does not indicate he suffered any harm or consequence as a result of the scheduling of the hearing only that the hearing was not scheduled as provided for in I.C. § 18-8002A(7). However, as the District Court found, Mr. Bezdicek's hearing was indeed scheduled within the thirty days of the date of the Notice of Suspension (R. p. 189).

Mr. Bezdicek makes this argument only in the context of the scheduling of the administrative hearing, not raising a due process argument as to the circumstances of the scheduling of the hearing. Since the hearing was held within thirty days of the Notice of the Suspension, Mr. Bezdicek's argument fails.

Mr. Bezdicek fails to request that the Hearing Examiner grant a stay of the effective date of the suspension knowing that the extension of the hearing date does not act as a stay of the effective date of the pending suspension.¹⁰

¹⁰The *show cause* letter clearly indicates that the scheduling of the hearing does not operate as a stay of the pending suspension. Mr. Bezdicek was advised that temporary driving privileges expired 30 days after the service of the Notice of Suspension (R. p. 31).

Mr. Bezdicek does not make a request for a stay of the effective date of the suspension pending the Hearing Examiner's decision. The Hearing Examiner's decision was dated April 30, 2014. The Hearing Examiner makes Mr. Bezdicek's suspension effective April 17, 2014 through July 16, 2014.

It is appropriate for the Hearing Examiner to ensure that Mr. Bezdicek has the discovery that he requested prior to the hearing.¹¹

The Hearing Examiner appropriately analyzed his responsibility to determine that good cause existed for scheduling the hearing and demonstrates his thought process. As the Court of Appeals cautioned in *Bell v. Idaho Transportation Department*, 151 Idaho 659, 262 P.3d 1030 (Ct. App. 2011), it is unreasonable to expect that the driver could be sufficiently prepared for the Administrative License Suspension hearing without the receipt of the requested discovery information.

Good cause generally means: “substantial reason, one that affords legal excuse. Legally sufficient ground or reason.” Blacks Law Dictionary 629 (5th Ed. 1979)

Good cause is a factual determination best left to the discretion of the Hearing Examiner. In the context of good cause to dismiss a criminal prosecution where the Defendant had not been brought to Trial within six months, “the matter is appropriately

¹¹ The Hearing Examiner finds:

- 7.22 There is no evidence that the extended hearing was unreasonable or unjustified considering that the extension was directed as to provide Bezdicek the opportunity to review subpoenaed information that was timely provided.
- 7.23 The extension resulted from the need for receipt of additional evidence, forwarding of the evidence, and time to review the evidence.
- 7.33 The purpose of the Subpoenas’ Duces Tecum and the extension was Bezdicek’s opportunity to obtain the requested documents/information and to make that information a part of the record which was the case in the Administrative License Suspension hearing, thus any argument regarding timeliness of the hearing is irrelevant and not grounds for dismissal of the suspension.
- 7.36 Bezdicek’s suspension will not be vacated solely on claims of timeliness issues based on the production of supplemented evidence beyond the requisite documents that need submitted to the Department pursuant to Idaho Code § 18-8002A.
- 7.37 Extending the hearing protected Bezdicek’s due process rights did not provide a statutory basis for vacating the license suspension.

Findings of Fact and Conclusions of Law and Order, R. pp. 19-21.

left to the discretion of the Trial Court”, *State v. Clark*, 135 Idaho 255, 16 P.3d 931 (2000). The Court there indicates “the ultimate decision of whether legal excuse has been shown is a matter for judicial determination upon the *facts and circumstances of each case*, *Clark at 936*. Here the Department’s Hearing Examiner makes detailed findings as to the “good cause” for his action to extend the date of the Administrative License Suspension Hearing. The Court should not on judicial review separately weigh the evidence as invited by Mr. Bezdicek, I.C. §67-5279 (See FN 6).

In other settings good cause has been expressed as a “factual inquiry”, ascertaining whether legal cause exists is based upon the *facts and circumstances of each use* (service of summons), *Martin v. Hoblit*, 133 Idaho 371, 987 P.2d 284, 288, 987 P.2d 284 (1999), or good cause is the standard of *reasonableness as applied to the average man or woman* (unemployment) *Small v. Jacklin Seed Co.*, 109 Idaho 541, 545, 709 P.2d 114, 118 (1985).

Mr. Bezdicek fails to argue that he was in any way prejudiced by the Hearing Examiner’s scheduling of the Administrative Hearing. Mr. Bezdicek also failed to object to the scheduling of the Hearing before the Hearing Examiner.

Not only does Mr. Bezdicek fail to indicate that there is any authority for his analysis, Mr. Bezdicek does not make a constitutional analysis suggesting that due process or equal protection are implicated by the Hearing Examiner’s action.

Mr. Bezdicek is apparently suggesting that a Hearing Examiner should not consider a driver’s discovery request and the request for the issuance of subpoenas when scheduling an Administrative License Suspension Hearing. The Idaho Courts have been interested in the circumstances of the scheduling of Administrative License Suspension Hearing, *Bell v. Idaho Transp. Dept.* 151 Idaho 659, 262 P.3d 1030 (Ct.App. 2011) considering the driver’s

burden and request for discovery. Mr. Bezdicek is arguing that it is apparently inappropriate for the Hearing Examiner to consider the Idaho Appellate Court's concern about the Department's "cumbersome" administrative process, *Bell v. Idaho Transp. Dept.* 151 Idaho 659, 262 P.3d 1030 (Ct.App. 2011).

Finally, Mr. Bezdicek is asking the Court to intrude into the Administrative License Suspension process in a wholly inappropriate manner, *Anderson v. Spalding*, 137 Idaho 509 at 520, 50 P.3d 1004 (2002).

There is no question as to the Hearing Examiner's thought process and why the hearing was scheduled beyond the twenty days and within thirty days (See FN 7 & 10). The Hearing Examiner appropriately exercised his discretion in setting the Hearing in this matter, responding to the Court's continuing concerns about the Department's Administrative License Procedure.¹²

This analysis of good cause must also be considered in light of the Idaho Court's determination that Dennis McNeely's interest in driving privileges was not so substantial as to require a pre suspension hearing, although the interest may be affected by the length of the suspension period and the timeliness of a post suspension review proceeding, *McNeely v. State*, 119 Idaho 182, 804 P.2d 911 (Ct. App. 1990). Additionally, upon being notified that the scheduling of the hearing date did not stay the suspension, Mr. Bezdicek fails to request a stay of the suspension pending the Hearing Examiner's decision.

As the District Court correctly determined, Mr. Bezdicek did not prevail on his claim that he had met his burden pursuant to I.C. § 18-8002A(7). Had Mr. Bezdicek

¹² The Idaho Court has continued to express its concern about protecting the driver's due process interest, *Platz*, 154 Idaho 960, 303 P.3d 647 at 657 (Ct. App. 2013), *In re Beyer*, 155 Idaho 40, 304 P.3d 1206 (Ct. App. 2013).

prevailed in meeting his burden pursuant to I.C. § 18-8002A(7) there might be a different basis for Mr. Bezdicek's argument but without making a due process argument and indicating the nature of the harm that Mr. Bezdicek suffered, there is no harm for the Court to consider.

Mr. Bezdicek does not demonstrate any injury, harm or consequence as a result of the Hearing Examiner's action scheduling the hearing or the Hearing Examiner's finding that good cause existed for the scheduling of the hearing to provide Mr. Bezdicek sufficient time (ten days) to prepare for the Administrative License Suspension hearing.


V. CONCLUSION

Mr. Bezdicek has not met his burden pursuant to I.C. § 18-8002A(7). Legal cause exists for the stop of Mr. Bezdicek's vehicle. Legal cause exists for Officer Mowery's belief that Mr. Bezdicek was operating a motor vehicle under the influence of alcohol.

Mr. Bezdicek has not met his burden to demonstrate that he suffered any cognizable harm, injury or consequence as a result of the Hearing Examiner's scheduling of the Administrative License Suspension hearing or that the date of the hearing was unreasonably extended.

The Hearing Examiner's decision to suspend Mr. Bezdicek's driving privileges should be sustained and Mr. Bezdicek's driving privileges should be suspended for ninety days.

DATED this 21 day of April, 2015.



Edwin L. Litteneker
Special Deputy Attorney General

I DO HEREBY CERTIFY that a true
And correct copy of the foregoing
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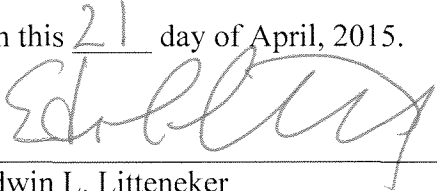
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To:

Jonathan D. Hally
Blewett Mushlitz, LLP
P.O. Box 1990
710 16th Avenue
Lewiston, Idaho 83501

On this 21 day of April, 2015.



Edwin L. Litteneker