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IN THE SUPREME COURT OF THE STATE OF IDAHO

\* \* \* \* \*

THAD EUGENE KERN, an individual	)	
	)	
Petitioner/Respondent,	)	Supreme Court No. 45798-2018
	)	Twin Falls County No. CV42-17-1820
vs	)	
	)	Supreme Court No. 45799-2018
IDAHO DEPARTMENT OF	)	Twin Falls County No. CV42-17-3425
TRANSPORTATION,	)	
	)	
Respondent/Appellant.	)	

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**APPELLANT’S BRIEF**

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Appeal from the District Court of the Fifth Judicial District of the State of Idaho,  
in and for the County of Twin Falls

Honorable Jon J. Shindurling  
District Judge, Presiding

---

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## I. STATEMENT OF THE CASE

### A. Nature of the Case.

This case involves both the commercial and basic automobile license suspensions of Appellee/Petitioner Thad Eugene Kern (“Kern”) following a DUI.<sup>1</sup> Kern unsuccessfully challenged his suspension to the Idaho Department of Transportation (“Department”) in an administrative hearing and then filed for judicial review by the Twin Falls County District Court (“District Court”). The District Court vacated the suspension and the Department appeals.

### B. Course of Proceedings.

On January 3, 2017, the Department issued a Notice of Suspension (“Notice”), suspending Kern’s CDL privileges for one year and his remaining driving privileges for ninety (90) days. R. p. 1-4. Kern requested a hearing on March 2, 2017. *Id.* at 68. A hearing was held on March 16, 2017. *Id.* The hearing officer, David J. Baumann (“Hearing Officer”), upheld the suspension on April 7, 2017. *Id.* at 104. Kern filed a Petition for Judicial Review on May 5, 2017. *Id.* at 146. The District Court vacated the license suspensions. *Id.* at 261.

### C. Statement of Facts.

On December 28, 2016, at about 12:35 P.M., Twin Falls County Deputy Matthew White (“White”) was dispatched to a “Reckless Driver that turned into a motor vehicle accident.” *Id.* Upon arrival at the scene, White observed a vehicle off the side of the road that appeared to have traveled off the roadway and into a fence. *Id.* White made contact with the driver, Kern, wherein White immediately observed that Kern was very slow in responding to White’s questions. *Id.*

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<sup>1</sup> The license suspension cases were consolidated into one case, Case No. 45798. The ALS Hearing Officer only made a determination on the Class D license suspension. There was not a hearing on the CDL license suspension. Rather, a stipulation was later entered to bifurcate, wherein the CDL license was suspended as a result of the ALS hearing. Essentially, even though the Hearing Officer only ruled on the Class D license suspension, both licenses were suspended as a result of the hearing. Thus, hereinafter the Hearing Officer’s determinations apply to both license suspensions.

White observed that Kern had a very hard time removing his driver's license from his wallet. *Id.*

White asked Kern if he had been drinking to which Kern responded, "Yes, I had two earlier." *Id.* White then asked Kern if he had taken any prescription medications, to which Kern responded that he had taken around 4 - 5 OxyContin, 4 Soma, and 2 MS Contin. *Id.* at 236-237. White called for a second unit and advised Kern that he would administer the Standardized Field Sobriety Tests. *Id.* at 237. When Kern exited the vehicle, White observed that Kern had difficulty keeping his balance. *Id.* Kern then fell to the ground as he exited the vehicle. *Id.*

White attempted to administer the Horizontal Gaze Nystagmus test. *Id.* However, White stopped the tests out of concerns for Kern's safety as Kern was unstable and unbalanced. *Id.* White placed Kern under arrest and transported him to the Twin Falls County Jail. *Id.* At the jail, White administered the Breathalyzer Test, which produced a Blood Alcohol Level of zero. *Id.* Because Kern admitted to taking prescription drugs, White obtained Kern's permission and administered a blood draw. *Id.* During these interactions between Kern and White, White noted that Kern had slurred speech, impaired memory, and glassy/bloodshot eyes. *Id.*

The blood draw results revealed the presence of Carisoprodol, Meprobamate, and Oxycodone in Kern's blood. *Id.* Carisoprodol is a muscle-relaxer known to cause drowsiness. *Id.* Meprobamate is a tranquilizer used to treat anxiety disorders or to provide short-term relief of anxiety. *Id.* Oxycodone is an opioid pain reliever, and patients are warned that taking Oxycodone with muscle relaxants or tranquilizers "may increase the risk of serious or life-threatening problems, sedation, or coma." *Id.* at 237-238. Further, all three medications have warnings advising patients not to drive until they know how the medication affects them. *Id.*

At the administrative hearing, Kern testified that he took the pain medications because has nerve damage. *Id.* at 238. He further stated that he had been taking pain medications for about

eight years, but had not noticed any impairment as a result of the medications. *Id.* However, Kern did not provide any evidence to dispel the observations of White, including Kern's (1) slow response to White's questions, (2) bloodshot eyes, (3) slurred speech, (4) slow speech, (5) unsteady balance which caused him to fall to the ground, and (6) impaired memory.

Kern submitted video footage of him at the jail. *Id.* at 239. The video displays Kern having delayed responses and slow speech (13:36 mark); balance/coordination issues (13:43 mark); dexterity issues (13:45 mark); slurred speech (13:51 mark); and an admission of taking the drugs, accompanied with both difficulty recalling and slow/slurred speech (14:04-05 mark). *Id.* In a shorter video submitted by Kern (Exhibit H), Kern had balance/coordination issues when he was asked to raise one foot (15:18 mark). *Id.* at 238.

At the administrative hearing, the Hearing Officer issued his Findings of Fact and Conclusions of Law and Order thereby upholding the license suspension. *Id.* at 103-04. There were only two issues raised by Kern: (1) whether White had legal cause to request the evidentiary testing and (2) whether Kern was properly informed of the consequences to submitting to the evidentiary testing. *Id.* at 94. Nonetheless, the Hearing Officer also made a determination on the Idaho Code section 18-8002A(7) issues: (1) whether the officer had legal cause to stop the vehicle; (2) whether the officer had legal cause to believe the driver was under the influence of drugs; (3) whether the test results showed the presence of drugs; (4) whether the evidentiary test was performed in compliance with Idaho Code sections 18-8004, 18-8004C, and 18-8006; (5) whether the evidentiary testing instrument functioned properly; and (6) whether the driver was advised of the consequences of submitting to the evidentiary test. *Id.* at 95-96.

The Hearing Officer identified that Kern had the burden of proof by a preponderance of evidence regarding the Idaho Code section 18-8002A license suspensions. *Id.* at 95. The Hearing

Officer looked at three categories of evidence: the presence of drugs, Kern's driving pattern, and "competent evidence of Kern's impairment caused by the drugs." *Id.* at 96. Each 18-8002A issue was then evaluated by the Hearing Officer.

First, the Hearing Officer held that the police officer had legal cause to stop and contact Kern. *Id.* at 95. The police officer was dispatched to a vehicle crash wherein Kern had traveled off the roadway and into a fence. *Id.* at 96. As such, the police officer was performing his duties as a law enforcement officer when he interacted with Kern. *Id.*

Next, the Hearing Officer held that the police officer had legal cause to believe Kern was driving while under the influence of intoxicating drugs. *Id.* at 99. There was competent evidence that Kern was impaired, such as bloodshot eyes, slow to speak, difficulty walking, and the admission that Kern had taken intoxicating drugs. *Id.* at 97. The Hearing Officer weighed all the evidence and considering "Kern presented no evidence that the drugs at issue were not intoxicating drugs," held that this element was met. *Id.* at 99.

Further, the Hearing Officer held that Kern failed the evidentiary test. *Id.* at 100. Kern submitted to the evidentiary blood test when requested by White. *Id.* at 100-01. The test revealed that Kern was intoxicated with Carisoprodol, Meprobamate, and Oxycodone. *Id.* at 101. The Hearing Officer also held that the evidentiary test was conducted in accordance with the Idaho Code sections 18-8003, 18-8004(4), and the IDAPA Rules as Kern submitted to the test and it was conducted properly at St. Luke's Magic Valley Hospital. *Id.* at 101-02.

Finally, the Hearing Officer held that Kern was properly advised of the consequences of the evidentiary test. *Id.* At jail and prior to the evidentiary test, the police officer played the audio recording of the Administrative License Suspension advisory. *Id.* at 100. The Hearing Officer weighed testimony and evidence regarding the advisory and made a determination that the audio



recording was sufficient to give Kern a proper warning of the evidentiary test. *Id.* at 102. As such, the Hearing Officer correctly held that the police officer followed and procedures to satisfy the requirements for the evidentiary test. *Id.* at 103.

On January 19, 2018, the District Court overturned this finding and held that the accident occurred as a result of Kern's distracted driving. *Id.* at 261. The court emphasized that the State was required to prove at the administrative hearing that the accident was caused by drugs per Idaho Code section 18-8004. *Id.* at 259-260. As such, the court made an inquiry into whether there was substantial and competent evidence on the record that showed Kern's ability to drive was impaired by drugs. *Id.* at 260.

The court found that there was competent evidence which existed to show that Kern was not driving in violation of Idaho Code section 18-8004. *Id.* at 260. The court reasoned that Kern never admitted to taking the drugs before driving that night. *Id.* Further, the court reasoned that Kern was "walking well, and that his responses [w]ere appropriate and in context." *Id.* Although the court recognized that Kern's "speech is a bit slurred, and his cognition may be somewhat slow," it held that the evidence was insufficient to show that Kern was impaired. *Id.*

According to the District Court, the "accident was caused by texting while driving, the scene was very slick and snowy, the temperature was cold, and the amount of traffic . . . led to the abandonment of the sobriety tests." *Id.* at 261. Ultimately, the District Court held that the Department did not present substantial and competent evidence showing that Kern was impaired. *Id.* Therefore, the District Court reversed license suspensions. *Id.*

## II. STANDARD OF REVIEW

The Idaho Administrative Procedures Act (IDAPA) governs the review of department decisions to deny, cancel, suspend, disqualify, revoke or restrict a person's driver's license. *See*

Idaho Code sections 49-201, 49-330, 67-5201(2), 67-5270; *See also In re Suspension of Driver's License of Gibbar*, 143 Idaho 937, 941, 155 P.3d 1176, 1180 (Idaho App. Ct. 2006). An administrative driver's license suspension "is a civil penalty separate and apart from any other suspension imposed for a violation of other Idaho motor vehicle codes or for a conviction of an offense." *In re Bowman*, 135 Idaho 843, 845, 25 P.3d 866, 868 (Idaho App. Ct. 2001). "In an appeal from the decision of the district court acting in its appellate capacity under IDAPA, [the appellate court] reviews the agency record independently of the district court's decision." *State Transp. Dept. v. Kalani-Keegan*, 155 Idaho 297, 300, 311 P.3d 309, 312 (Idaho 2013). A court may overturn an agency's decision only when the agency's findings, inferences, conclusions, or decisions: (a) violate statutory or constitutional provisions; (b) exceed the agency's statutory authority; (c) are made upon unlawful procedure; (d) are not supported by substantial and competent evidence in the record; or (e) are arbitrary, capricious, or an abuse of discretion. Idaho Code section 67-5279(3). The party challenging the agency decision must demonstrate that the agency erred in a manner specified in Idaho Code section 67-5279(3) and that a substantial right of that party has been prejudiced. *Price v. Payette County Bd. of County Comm'rs*, 131 Idaho 426, 429, 958 P.2d 583, 586 (Idaho 1998); *See also In re Marshall*, 137 Idaho 337, 340, 48 P.3d 666, 669 (Idaho App. Ct. 2002), *In re Beyer*, 155 Idaho 40, 44, 304 P.3d 1206, 1210 (Idaho App. Ct. 2013).

### **III. LAW AND ARGUMENT**

It is the Department's position that this Court should overturn the holding by the District Court to vacate the license suspensions. This Court has authority to overturn the decision of the District Court since that court exceeded its statutory authority. Idaho Code section 67-5279(3)(b). Because the District Court exceeded its authority and as there was substantial and competent evidence that

Kern was impaired by intoxicating drugs, this Court should uphold the decision of the Hearing Officer.

A. **THE DISTRICT COURT EXCEEDED THE SCOPE OF ITS AUTHORITY WHEN IT APPLIED THE INCORRECT STATUTE.**

Respectfully, the District Court incorrectly overturned the decision of the Hearing Officer upholding the suspension of the driver's licenses. First, the District Court applied the wrong statute. As a result of applying the wrong statute, the District Court incorrectly placed a higher burden of proof on the Department. Finally, the District Court made additional factual findings without cause. Thus, the District Court exceeded its scope of authority in its holding.

- i. *The District Court misapplied the criminal statute to the license suspension hearing thereby placing the incorrect burden on the Department.*

In Idaho, a motorist may both be criminally charged with driving under the influence of intoxicating drugs under Idaho Code section 18-8004 and, in a separate action, have his license suspended under Idaho Code section 18-8002A. *State v. Reichenberg*, 128 Idaho 452, 456, 915 P.2d 14, 18 (Idaho 1996). Under Idaho Code section 18-8004, a motorist will be criminally convicted if the Department can prove beyond a reasonable doubt that the motorist's impairment was caused by intoxicating drugs. *State v. Stark*, 157 Idaho 29, 31, 333 P.3d 844, 846 (Idaho App. Ct. 2013). Alternatively, under Idaho Code section 18-8002A, a motorist will have his license suspended if he fails the evidentiary test outlined in Idaho Code section 18-8004. *Bowman*, 135 Idaho at 868-69, 25 P.3d at 843-44 (Idaho App. Ct. 2001).

Should a motorist fail the evidentiary test as defined in Idaho Code section 18-8004, the motorist may challenge the suspension by requesting a hearing. Idaho Code section 18-8002A(2)(b). The person requesting the hearing must prove by a preponderance of the evidence that the license suspension was invalid. Idaho Code section 18-8002A(7). Although the

evidentiary test is defined in 18-8004, the facts found by the hearing officer regarding the 18-8002A suspension must be found on independent grounds, unrelated to an 18-8004 criminal hearing (if any). *Reichenberg*, 128 Idaho at 457-58, 915 P.2d at 19 (Idaho 1996). Therefore, there is a distinct and separate charge for both license suspensions under 18-8002A and a criminal charge under 18-8004. *Bowman*, 135 Idaho at 846-47, 25 P.3d at 869-70 (Idaho App. Ct. 2001).

In this case, the District Court incorrectly applied the Idaho Code section 18-8004 criminal statute to the license suspension hearing. The District Court held that there was no “substantial or competent evidence on the record as a whole showing that Kern was impaired by drugs in violation of IC 18-8004.” R. p. 261. The District Court reasoned that “[c]ontrary to the hearing officer’s findings . . . the officer did not have a legal basis to believe that Kern was driving in violation of IC 18-8004.” *Id.* at 260. Further, the District Court reasoned that “[f]or purposes of 18-8004, the state must also ‘prove that the impairment was caused by . . . drugs[.]’” *Id.* at 260 (quoting *Stark*, 157 Idaho at 31, 333 P.3d at 846 (Idaho 2013)).<sup>2</sup> As such, the court held that “[w]ithout substantial evidence showing that Kern’s impairment was caused by drugs, the license suspension and disqualification cannot stand.” *Id.*

Essentially, the District Court held that the Department did not satisfy its burden at the administrative hearing. However, by applying Idaho Code section 18-8004 the court both placed the burden on the wrong party and required a higher burden. At the administrative hearing, it was Kern’s burden to prove by a preponderance of evidence that the license suspension was invalid. The District Court held the Department to the higher burden in Idaho Code section 18-8004

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<sup>2</sup> It is important to distinguish that this case was a DUI criminal conviction under Idaho Code section 18-8004 and not an 18-8002A license suspension case.

when instead it should have placed the burden on Kern to challenge the license suspension. The court provides no evidence that it found Kern fulfilled his burden. As a result of the District Court incorrectly placing a higher burden on the Department, the court exceeded its scope of authority when it challenged Hearing Officer's determination. Therefore, the District Court's holding should be vacated.

ii. *The District Court relied on facts not at issue in the case when it made additional fact finding.*

The District Court exceeded its authority by making factual determinations outside the scope of the case. A district court cannot substitute its judgment for that of the agency as to the weight of the evidence presented. Idaho Code section 67-5279(1). A court may overturn an agency's decision when the agency's findings are not supported by substantial and competent evidence in the record.<sup>3</sup> Idaho Code section 67-5279(3)(d). An agency's factual determinations are binding on the reviewing court insofar as the determinations are supported by substantial and competent evidence in the record. *Gibbar*, 143 Idaho at 941, 155 P.3d at 1180. Thus, the agency's factual determinations are binding on the district court unless the findings of fact are clearly erroneous. *Id.* In this case, because the District Court relied on the wrong statute it made additional fact findings without authority.

Here, the District Court held that the Hearing Officer's "determination [w]as not supported by substantial and competent evidence" showing that Kern's impairment was caused by drugs in violation of Idaho Code section 18-8004. The District Court reasoned that the

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<sup>3</sup> There are five reasons why a court may overturn an agency's decision: (1) a violation of statutory or constitutional provisions, (2) the agency exceeded its statutory authority, (3) the agency made a decision upon unlawful procedure, (4) the decision was not supported by substantial and competent evidence, or (5) the decision was arbitrary or capricious. In this case, the District Court made its determination based on IC 67-5279(3)(d). As such, the other factors are not discussed here.

“accident was caused by texting while driving.” R. p. 261. The court also made additional findings outside of the administrative hearing such as the slick conditions of the road, the cold temperatures, and the amount of traffic that led to the cause of the accident. *Id.* As stated above, the District Court relied on a criminal statute which required a higher burden of proof on the Department and for causation to be proved. As a result, the District Court challenged the facts made by the Hearing Officer without statutory authority. Further, the additional facts found by the court are irrelevant to this case.

Causation need not be proven pursuant to Idaho Code section 18-8002A since it is not a criminal statute. Rather, pursuant to Idaho Code section 18-8002(A) the only relevant fact in this case was whether Kern’s driving was impaired because of intoxicating drugs. In other words, the actual cause of the accident is irrelevant here as Kern’s license was suspended because he was driving while intoxicated, not because he caused an accident.

The Hearing Officer weighed the evidence and held that there were intoxicating drugs in Kern’s systems. As such, the District Court should not have challenged the Hearing Officer’s findings. It was proven at the agency hearing that Kern failed the evidentiary test, which is all that Idaho Code section 18-8002A required. Thus, the license suspensions should be reinstated since the District Court incorrectly challenged the fact finder’s determinations and since it relied on irrelevant facts.

**B. THE HEARING OFFICER CORRECTLY AFFIRMED KERN’S LICENSE SUSPENSIONS.**

The Hearing Officer correctly held that Kern’s licenses were to remain suspended. On appeal, Kern essentially argued that he had a valid prescription and did not feel impaired and for those reasons, the Hearing Officer should have vacated the suspension. Respectfully, this Court

should reinstate Kern's suspensions since Kern failed to meet his burden of proof and since the Hearing Officer's finding of facts were supported by substantial and competent facts.

*i. Kern did not meet his burden of proof at the administrative hearing.*

At an agency hearing, the petitioner carries the burden of proof by a preponderance of the evidence to challenge the license suspension standards in Idaho Code section 18-8002A. *Beyer*, 155 Idaho at 43, 304 P.3d at 1209. A hearing officer cannot vacate the license suspension unless the petitioner proves that (1) the police officer did not have legal cause to make the stop, (2) the police officer did not have legal cause to believe the motorist was driving under the influence of intoxicating drugs, (3) the evidentiary test results did not show a violation of Idaho Code section 18-8004, (4) the evidentiary test was not conducted properly under 18-8004, or (5) the motorist was not informed of the consequences of the evidentiary test. *Id.* The hearing officer must make a finding of fact to each of these issues. Idaho Code section 18-8005(7). Therefore, the petitioner must prove one of those bases in order to vacate the suspension.

This Court has held that “findings of fact based on substantial and competent evidence will not be overturned on appeal even in the face of conflicting evidence.” *H.F.L.P., LLC v. City of Twin Falls*, 157 Idaho 672, 679, 339 P.3d 557, 564 (Idaho 2014). However, any argument regarding “substantial and competent evidence” must be considered in conjunction with the burden of proof. *See generally H.F.L.P.*, 157 Idaho, 339 P.3d. In *H.F.L.P.*, the Idaho Supreme Court reviewed a bench trial decision that the plaintiff failed to carry its burden of proof in an easement/title dispute. *Id.* The Court looked to how the district court determined that the plaintiff failed to carry its burden of proof and that the plaintiff pointed to no evidence that would prove the district court wrong. *Id.* The Court recognized that “[w]here substantial and competent evidence supports findings of fact, they will not be disturbed on appeal, even if there is conflicting evidence.” *Id.* at 339. The Court

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defined substantial and competent evidence as “that which a reasonable trier of fact would accept and rely upon in determining findings of fact.” *Id.*

Similar to *H.F.L.P.*, Kern failed to satisfy his burden of proof because he did not provide evidence to rebut the trier of fact’s determinations. As noted above, there are only five bases upon which the Hearing Officer could vacate the suspension pursuant to Idaho Code section 18-8002A(7). At trial, Kern presented no evidence that the officer did not have legal cause to stop Kern or that the officer did not have legal cause to believe Kern was under the influence. Further, Kern provided no evidence that the test result did not show drugs in his system or that the test was administered improperly. In summary, Kern presented no evidence that would challenge any of the evidence found against him. Thus, there is substantial and competent evidence since Kern did not satisfy his burden.

This Court should overturn the District Court’s decision to vacate the suspension as it did in *Idaho Transp. Dept. v. Van Camp. Idaho Transp. Dept. v. Van Camp*, 153 Idaho 585, 288 P.3d 802 (Idaho 2012). In *Van Camp*, a driver was pulled over after making an illegal U-turn. *Id.* at 586. The officer noted that the driver had slurred speech, red/watery eyes, and a dry mouth. *Id.* The driver also appeared confused and disoriented and was unable to locate his wallet, registration, or proof of insurance. *Id.* After failing the standardized field sobriety tests, the officer subjected the driver to a breath test, which resulted in a BAC of zero. *Id.* The driver admitted to taking two prescription drugs (cyclobenzaprine and Seroquel),<sup>4</sup> and the urine sample confirmed the presence of prescription drugs. *Id.* The driver’s license was suspended and the driver challenged the suspension arguing that the Department had the burden of proving that the drugs were intoxicating. *Id.* The Department affirmed the suspension, and the driver sought judicial review. *Id.* The district

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<sup>4</sup> Only cyclobenzaprine was at issue in the case. *Van Camp*, 153 Idaho at 586.



court vacated the suspension, holding that the Department did not satisfy its burden to prove the drugs were intoxicating. *Id.*

On appeal the Court first noted it was the driver's burden to prove his suspension should be vacated and that the only bases upon which the driver's suspension could be vacated were found in Idaho Code section 18-8002A(7). *Id.* at 586, at 803. The Court observed that the driver "presented no evidence that cyclobenzaprine is not an intoxicating drug." *Id.* Further, the Court found the driver did not satisfy his burden by disproving any of the 18-8002A bases:

Essentially, [the driver] contends that the absence of evidence demonstrating that cyclobenzaprine is intoxicating is sufficient to prove that the drug is not intoxicating. This is inconsistent with the plain language of subsection 7(c), which requires the licensee to affirmatively prove that the drug was not intoxicating.

*Id.* In summary, substantial and competent evidence must exist if the person who carries the burden of proof fails to rebut the evidence against him.

Similar to Van Camp, and as noted above, Kern failed to present any evidence that would support one of the bases upon which the Hearing Officer could vacate his suspension. Kern did not establish that he did not have drugs in his system or that his drugs were not intoxicating; therefore, the Hearing Officer could not vacate the suspension. As stated above, contrary to the holding of the District Court, it was not the Department's burden to prove the 18-8002A bases were satisfied, but it was Kern's burden to disprove those bases. As Kern failed to disprove the bases, the Hearing Officer could not vacate the suspension.

*ii. The Hearing Officer's findings of fact should not have been reexamined.*

On appeal, a court should not disturb the findings of fact without statutory authority. A court sitting in an appellate position "does not substitute its judgment for that of the agency as to the weight of the evidence presented." *Feasel v. Idaho Transp. Dept.*, 148 Idaho 312, 314, 222 P.3d

480, 482 (Idaho 2009). Instead, it is to “defer to the agency’s findings of fact unless they are clearly erroneous.” *Id.* In this case, the Hearing Officer’s findings of fact were not clearly erroneous.

This court should review and stand by the decision of the Hearing Officer. “When a case comes before this Court on a petition for review from [an appellate court], serious consideration is given to the views of the [appellate court], but this Court reviews the decision of the lower court directly.” *Hoffer v. City of Boise*, 151 Idaho 400, 402, 257 P.3d 1226, 1228 (Idaho 2011) (citing *Kelly v. State*, 149 Idaho 517, 521, 236 P.3d 1277, 1281 (Idaho 2010)). Further, when the Court reviews the decision in an appeal from an agency action, the Court reviews “the decision of the district court to determine whether it correctly decided the issues presented to it.” *Elias-Cruz v. Idaho Dept. of Transp.*, 153 Idaho 200, 202, 280 P.3d 703, 705 (Idaho 2012) (citing *Wright v. Bd. of Psychol. Examiners*, 148 Idaho 542, 544–45, 224 P.3d 1131, 1133–34 (Idaho 2010)). Because the District Court erred in its ruling, this court should review and stand by the decision made by the Hearing Officer.

The District Court exceeded its statutory authority by reexamining the facts made by the Hearing Officer. As stated above, the District Court incorrectly shifted the burden to the Department and thereby reexamined the facts made by the Hearing Officer without statutory authority. The Hearing Officer weighed the evidence and determined that Kern failed to meet his burden in challenging the bases of the 18-8002A statute. By applying the wrong statute, the District Court had no statutory authority to reexamine and challenge the findings of fact. Therefore, this court should overturn the District Court’s holding since it exceeded its statutory authority.

#### **IV. CONCLUSION**

Kern operated a motor vehicle while under the influence of intoxicating drugs. The Hearing Officer, as the trier of fact, correctly held that Kern had intoxicating drugs in his system. The

District Court erred when it relied on the incorrect statute thereby placing a higher burden on the Department and relying on irrelevant facts in excess of its statutory authority. Therefore, the Court should reverse the District Court's decision and reinstate the license suspensions.

DATED this 22<sup>nd</sup> day of June, 2018.

  
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Timothy J. Stover

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22<sup>nd</sup> day of June, 2018, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF to be served by the method indicated below, and addressed to the following:

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