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JUSTIN M. ALVORD v. COMMISSIONER OF  
MOTOR VEHICLES  
(AC 24443)

Foti, Schaller and Berdon, Js.

*Argued February 17—officially released August 3, 2004*

(Appeal from Superior Court, judicial district of New  
Britain, Levine, J.)

*Priscilla J. Green*, assistant attorney general, with  
whom, on the brief, was *Richard Blumenthal*, attorney  
general, for the appellant (defendant).

*Steven A. Tomeo*, for the appellee (plaintiff).

*Opinion*

SCHALLER, J. After a hearing, the defendant commis-  
sioner of motor vehicles ordered the suspension of the  
motor vehicle operator's license of the plaintiff, Justin  
M. Alvord, for having operated a motor vehicle while  
under the influence of intoxicating liquor. The plaintiff  
sought judicial review of the defendant's order pursuant  
to General Statutes § 4-183, and the trial court reinstated  
the plaintiff's license. On appeal, the defendant claims  
that substantial evidence existed in the record to sup-  
port its suspension order, and, thus, the court improp-  
erly determined that the hearing officer's finding of fact  
that the plaintiff had a blood alcohol content (BAC) of  
"0.07 [percent] or more" prohibited the license suspen-

sion. We reverse the judgment of the trial court and remand this matter with direction to reinstate the defendant's suspension order.

The facts are as follows. At approximately 5:13 p.m. on January 5, 2003, Trooper Daniel Bavosi of the state police observed the plaintiff operating his motor vehicle erratically and effectuated a stop.<sup>1</sup> Bavosi detected a strong odor of alcohol on the plaintiff's breath, noticed that his eyes were glossy and bloodshot, and asked the plaintiff whether he had consumed any alcoholic beverages. After the plaintiff responded that he had consumed "a couple," Bavosi administered field sobriety tests. The plaintiff passed the alphabet and walk-turn tests, but failed the horizontal gaze nystagmus and the one-leg stand tests. Bavosi arrested the plaintiff for operating a motor vehicle while under the influence of intoxicating liquor in violation of General Statutes § 14-227a.<sup>2</sup>

At the state police barracks, the plaintiff submitted to Breathalyzer tests. The first test, administered at 6:04 p.m., indicated a BAC of 0.152 percent; the second test, administered approximately thirty-one minutes later, indicated a BAC of 0.126 percent. Consequently, the defendant suspended the plaintiff's license for nine months in accordance with § 14-227b.<sup>3</sup> Pursuant to the plaintiff's request under § 14-227b (e), the department of motor vehicles provided an administrative hearing in accordance with § 14-227b (g) to allow the plaintiff to contest his license suspension. Acting on behalf of the defendant, the hearing officer found, inter alia, that the plaintiff had "submitted to the test or analysis and the results indicated a BAC of 0.07 [percent] or more."<sup>4</sup> Accordingly, the defendant ordered the suspension of the plaintiff's license.

The plaintiff appealed to the trial court from the defendant's order pursuant to § 4-183 (a). The court sustained the plaintiff's appeal because the hearing officer's finding that the plaintiff's BAC was "0.07 [percent] or more" failed to satisfy the 0.08 percent BAC requirement, as provided in § 14-227a (a). This appeal followed.

"[J]udicial review of the commissioner's action is governed by the Uniform Administrative Procedure Act [(UAPA), General Statutes §§ 4-166 through 4-189], and the scope of that review is very restricted. . . . [R]eview of an administrative agency decision requires a court to determine whether there is substantial evidence in the administrative record to support the agency's findings of basic fact and whether the conclusions drawn from those facts are reasonable. . . . Neither this court nor the trial court may retry the case or substitute its own judgment for that of the administrative agency on the weight of the evidence or questions of fact. . . . *Our ultimate duty is to determine, in view of all of the evidence, whether the agency, in issuing its order, acted unreasonably, arbitrarily, ille-*

*gally or in abuse of its discretion.*” (Citation omitted; emphasis added; internal quotation marks omitted.) *Murphy v. Commissioner of Motor Vehicles*, 254 Conn. 333, 343, 757 A.2d 561 (2000).

The defendant claims that because all four suspension criteria set forth in § 14-227b (g)<sup>5</sup> were satisfied, the court improperly overturned the defendant’s decision to suspend the plaintiff’s license.<sup>6</sup> At issue in the present case is the third criterion set forth in § 14-227b (g), namely, whether substantial evidence existed in the record to support the defendant’s finding that the plaintiff had operated a motor vehicle with a BAC of 0.08 percent or more. Although the defendant found that the plaintiff “submitted to [Breathalyzer tests] and the results indicated a BAC of 0.07 [percent] or more,” our review of the record indicates that substantial evidence existed to support the defendant’s conclusion that the plaintiff operated a motor vehicle while he had an elevated blood alcohol content.

Bavosi testified that the plaintiff failed the horizontal gaze nystagmus and the one-leg stand field sobriety tests. Further, the plaintiff submitted to Breathalyzer tests, the results of which indicated a BAC of 0.152 percent and 0.126 percent, respectively.<sup>7</sup> “An administrative finding is supported by substantial evidence if the record affords a substantial basis of fact from which the fact in issue can be reasonably inferred.” (Internal quotation marks omitted.) *Murphy v. Commissioner of Motor Vehicles*, supra, 254 Conn. 343. In this case, the plaintiff’s Breathalyzer test results clearly were in excess of the 0.08 percent elevated BAC requirement set forth in § 14-227a (a). On the basis of the foregoing, we conclude that the defendant’s order to suspend the plaintiff’s license was reasonably supported by the evidence and it must be sustained.

The judgment is reversed and the case is remanded with direction to reinstate the defendant’s order suspending the plaintiff’s license.

In this opinion FOTI, J., concurred.

<sup>1</sup> Bavosi testified that before he stopped the plaintiff’s vehicle, he saw the defendant on Interstate 395 “making several tight swerves within the line” and then “cross the fog line . . . .”

<sup>2</sup> General Statutes § 14-227a (a) provides in relevant part: “No person shall operate a motor vehicle while under the influence of intoxicating liquor or any drug or both. A person commits the offense of operating a motor vehicle while under the influence of intoxicating liquor or any drug or both if such person operates a motor vehicle on a public highway of this state . . . (1) while under the influence of intoxicating liquor or any drug or both, or (2) while such person has an elevated blood alcohol content. For the purposes of this section, ‘elevated blood alcohol content’ means a ratio of alcohol in the blood of such person that is eight-hundredths of one per cent or more of alcohol, by weight.”

<sup>3</sup> General Statutes § 14-227b (i) provides in relevant part: “The commissioner shall suspend the operator’s license or nonresident operating privilege, and revoke the temporary operator’s license or nonresident operating privilege issued pursuant to subsection (c) of this section . . . after a hearing, the commissioner held pursuant to subsection (h) of this section, as of the effective date contained in the suspension notice or the date the commissioner renders a decision, whichever is later, for a period of . . .

(2) if such person has previously had such person's operator's license or nonresident operating privilege suspended under this section, (A) except as provided in subparagraph (B) of this subdivision, nine months if such person submitted to a test or analysis and the results of such test or analysis indicated that such person had an elevated blood alcohol content . . . ."

<sup>4</sup> It is noteworthy that prior to July 1, 2002, General Statutes § 14-227a (a) included a subparagraph that stated that if a person had a prior conviction under the statute, that person violated the statute if his BAC was above seven-hundredths of 1 percent. The plaintiff here had a previous conviction under the statute.

<sup>5</sup> General Statutes § 14-227b (g) provides in relevant part that the hearing to contest the defendant's suspension decision "shall be limited to a determination of the following issues: (1) Did the police officer have probable cause to arrest the person for operating a motor vehicle while under the influence of intoxicating liquor or drug or both; (2) was such person placed under arrest; (3) did such person refuse to submit to such test or analysis or did such person submit to such test or analysis, commenced within two hours of the time of operation, and the results of such test or analysis indicated that such person had an elevated blood alcohol content; and (4) was such person operating the motor vehicle. . . ."

<sup>6</sup> General Statutes § 14-227b (h) provides in relevant part: "If, after such hearing, the commissioner finds on any one of the said issues in the negative, the commissioner shall reinstate such license or operating privilege. If, after such hearing, the commissioner does not find on any one of the said issues in the negative . . . the commissioner shall affirm the suspension . . . for the appropriate period specified in subsection (i) of this section. . . ."

<sup>7</sup> The dissent argues that this case should be remanded to the trial court to consider whether the defendant abused its discretion by failing to grant the plaintiff's petition for reconsideration. The dissent refers to an unsworn letter of a "Dr. James E. O'Brien, Ph.D., M.D.," which is attached to the petition for reconsideration. The letter does not indicate how O'Brien was trained or why he was qualified to comment on this matter. In any event, the plaintiff did not amend his appeal to the trial court to challenge the defendant's denial of the petition for reconsideration. It would, therefore, be inappropriate to remand this issue to the trial court.