

STATE OF MINNESOTA
COUNTY OF DAKOTA

DISTRICT COURT
FIRST JUDICIAL DISTRICT

File No. [REDACTED]

[REDACTED]
Petitioner,

ORDER REINSTATING
PETITIONER'S
DRIVER'S LICENSE

v.

Commission of Public Safety,
Respondent.

The above-entitled matter came before the Honorable Jamie L. Cork, Judge of District Court, for an Ignition Interlock Limited License Revocation Hearing on October 25, 2016, at the Dakota County Western Service Center, Apple Valley, Minnesota.

The matter came before the Court pursuant to Petitioner's request for review under Minn. Stat. § 171.19.

APPEARANCES

Charles Ramsey, Esq. appeared on behalf of the Petitioner, [REDACTED]
[REDACTED] who was present.

Lindsay LaVoie, Assistant Attorney General, appeared on behalf of Respondent, Commissioner of Public Safety.

WITNESSES

1. The following witness was called by Petitioner, placed under oath, and testified at the hearing:

a. [REDACTED] [REDACTED]

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DAKOTA COUNTY, Court Administrator

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2. Respondent did not call any witnesses.

EXHIBITS

1. The following exhibits were entered into evidence without objection:
 - a. Exhibit 6: Complete logs from Petitioner's Intoxalock Device.
 - b. Exhibit 7: Photographs from Petitioner's car.
2. Respondent's Reply Brief submitted to the Court prior to the hearing included pre-marked exhibits 1 through 5.

Based upon the proceedings, this Court makes the following:

FINDINGS OF FACT

Petitioner has multiple alcohol-related incidents on her driving record. Due to these repeated violations, Petitioner's driver's license was cancelled on August 6, 2012. Because Petitioner's license was cancelled as inimical to public safety, Petitioner was required to complete a Last Use Statement to enroll in the Ignition Interlock Program. Petitioner enrolled in the Ignition Interlock Program on February 22, 2013 and was issued a limited license on March 4, 2013.

Petitioner violated her limited license on September 21, 2014 for driving outside of her allowed work permit. The violation resulted in the extension of her revocation period. Petitioner was conditionally reinstated on the Ignition Interlock Program on January 7, 2015.

With the exception of the violation in 2014, which resulted in a 30-day suspension, Petitioner has been on the Ignition Interlock Program from March 2013 until June 2016.

Petitioner admitted in her Last Use Statement, and credibly testified under oath at the hearing, that her last drink of alcohol was in 2012.

The above entitled-case comes before the Court on Petitioner's Petition for Judicial Review of the Department of Public Safety, Driver and Vehicle Services' ("DVS") cancelation of Petitioner's limited license based on an alleged Ignition Interlock violation on May 24, 2016. DVS based the cancelation on two breath alcohol concentration tests on May 24, 2016 at 8:12 a.m. and 8:20 a.m., which tested positive for alcohol in excess of the threshold limit of 0.02. *See* Minn. Stat. § 171.306. Respondent also argues its cancelation was justified because Petitioner signed and agreed to the Ignition Interlock guidelines. "The program guidelines state in pertinent part, 'The participant is presumed to have provided all breath samples. Any indication of use of alcohol by the device will be *considered use of alcohol* by the participant and will be taken into consideration by the Department.'" Respondent's Reply to Petition for Reinstatement, at 2-3 (emphasis in original).

Based on these two positive tests on May 24, 2016, Respondent sent notice to Petitioner on May 26, 2016 that effective June 1, 2016, Petitioner's license would again be canceled and denied as inimical to public safety. The tests that Respondent relied upon from May 24, 2016 were:

1. 8:12 a.m.: BAC - 0.027;
2. 8:20 a.m.: BAC - 0.025;
3. 9:06 a.m.: BAC - 0.013;
4. 9:14 a.m.: BAC - 0.012; and,
5. 9:37 a.m.: BAC - 0.00.

At the hearing, Petitioner testified on her own behalf. The Court finds Petitioner,

and her testimony, credible. Petitioner testified that she has been on the Ignition Interlock Program for multiple years with different companies. Due to a change in the legislatively approved programs, Petitioner was required to change Ignition Interlock providers in July 2015. Petitioner began with Intoxalock on July 1, 2015. Petitioner submitted, and the Court accepted into evidence, Petitioner's log history from Intoxalock. Ex. 6. The Intoxalock logs range from August 26, 2015 through August 1, 2016. The logs include all successfully completed tests, attempted tests, failed tests, reasons for the test failures, rejected tests, service records, service reminders, and missed tests. *See generally id.* The eleven months of logs total 189 pages and includes 10,518 total entries.

Petitioner testified that she is currently employed in the service department of an auto dealership. She also testified about the components, system, and setup of the Intoxalock device in her vehicle. Petitioner explained that the device is comprised of a mouthpiece, a tube to the ignition, a camera attached to the dashboard or windshield pillar on the passenger side, and a Wi-Fi device to report the tests to the device company. Petitioner testified that the mounting device for the camera was flimsy and unstable. Petitioner had resorted to attempting to use double-sided tape to attach and mount the camera. The tape had a tendency to fail and the camera would fall whenever the car would hit a bump in the road or during warm or cold weather.

Petitioner testified that as a part of the Intoxalock system, she must bring her car and the device in for maintenance every 60 days. When Petitioner brings the device in, Intoxalock replaces the mouthpiece of the device and recalibrates the device but does not replace the entire device. Petitioner testified that she has notified Intoxalock of the

problems with the camera mount, but they have not replaced or fixed the mount. Petitioner admitted through cross-examination that she has never requested a new device from Intoxalock. Petitioner was told by Drive Safe Solutions, a company that installs Ignition Interlock devices, that when the device returns a false positive result Petitioner should wait for the machine to clean itself one or two times.

Petitioner argued that the Court should reinstate her license because the Commissioner's decision to cancel Petitioner's license was fraudulent, arbitrary, unreasonable, or not within the jurisdiction and power of the Commission. Specifically, Petitioner argues for reinstatement because the Commissioner's decision was based upon the device malfunctioning and showing a false positive.

During the hearing, Petitioner testified and outlined two other instances of false positive readings: once on October 28, 2015, and once on December 19, 2015. Instead of testifying to every false positive result in the logs, the Court allowed Petitioner to outline the other false positives in post-hearing written submissions.

In the instances Petitioner testified to, the October 28, 2015 Start-Test showed a BAC of 0.00 at 9:29 p.m. During a rolling retest eight minutes later at 9:37 p.m., the machine registered a BAC of 0.025. Petitioner was required to submit another retest three minutes later. The retest at 9:40 p.m. registered a BAC of 0.00. Another retest was completed at 9:58 p.m., which also showed a BAC of 0.00.

Petitioner also testified about the results from tests on December 19, 2015. Petitioner passed the start test on December 19, 2015 at 7:59 a.m. with a BAC of 0.00. Eight minutes later, at 8:07 a.m., Petitioner allegedly failed with a BAC of 0.026. Petitioner then

attempted to retest three times in the next five minutes. The three tests were rejected as invalid samples because of "late humming" and "late suction." Petitioner's fourth attempt was accepted as valid. The fourth attempt occurred at 8:12 a.m., five minutes after the alleged failed test, and returned a passing a BAC of 0.013. Petitioner then had three more rejected retests for invalid samples. Petitioner's next accepted retest was at 8:30 a.m. and showed a BAC level of 0.00.

Respondent does not allege or claim that these "positives" were violations of the Ignition Interlock program. Based on the start test results and the almost immediate return to clear tests, it is clear that these "positive" results were false positives and a result of the machine malfunctioning or environmental contamination.

Respondent argues that these instances were distinguishable from the May 24, 2016 violation because the results from the May 24, 2016 tests show repeated failures over one hour and twenty-five minutes, whereas the false positives on October 28 and December 19, 2015 were single "failed" tests with a passing retest shortly thereafter. For the purposes of canceling a limited license, the Commissioner requires two tests above the 0.02 BAC threshold. Minn. Stat. § 171.306, subd. 4(d). Thus, the Commissioner did not cancel Petitioner's license on December 19, 2015 because, even though the second "passing" retest was positive for the presence of alcohol, the results of 0.013 BAC were by the Commissioner's logic a "passing" retest. However, for the purpose of canceling Petitioner's license, Respondent claims that the breath tests on May 24, 2016, which all show declining levels of BAC, "all four [tests] indicated the presence of alcohol on Petitioner's breath." Respondent's Memorandum in Support of Sustaining Revocation, at

3. The third and fourth tests from May 24, 2016 show BAC levels of 0.013 and 0.012. These tests were taken fifty-four minutes (9:06 a.m.), and one-hour and two minutes (9:14 a.m.) after the first failed test. The Commissioner does not articulate why these results, which are both also under the 0.02 BAC threshold, should be considered positive indicators of alcohol, while the retest from December 19, 2015 is not considered indicia of alcohol consumption when the tests returned the exact same result of 0.013 BAC.

In addition to the two false positive tests Petitioner testified to, Petitioner's Memorandum of Law noted fifteen additional dates where the Intoxalock Device returned a positive reading for alcohol. The Court has reviewed all of the evidence on the record, including Exhibit 6, the Intoxalock logs. In addition to the positive tests noted by Petitioner, the Court has found a total of sixty-nine tests that registered positive for alcohol on forty-nine separate days during the eleven months that Petitioner was on the Intoxalock Device.¹

CONCLUSIONS OF LAW

In a reinstatement proceeding, the district court conducts a trial *de novo* and independently determines whether a driver is entitled to license reinstatement. *Pallas v. Comm'r of Pub. Safety*, 781 N.W.2d 163, 166 (Minn. Ct. App. 2010) (quoting *Madison v. Comm'r of Pub. Safety*, 585 N.W.2d 77, 82 (Minn.App.1998), *review denied* (Minn. Dec. 15,

¹ Petitioner noted fifteen separate dates of positive tests in her brief. See Petitioner's Memorandum of Law at 3. In addition to the dates cited by, and testified to by Petitioner, the logs indicate positive results in 2015 on October 9th, 14th, and 18th, November 24th, 27th, and 28th, December 8th, 9th, 11th, 12th, 14th, 17th, 23rd, 28th, and 29th. In 2016, positive results were recorded on January 4th, 5th, 25th, and 26th, February 4th, 23rd, and 24th, March 10th, 11th, 25th, and 28th, April 12th and 21st, May 10th and 28th, and July 1st and 15th.

1998)). A presumption of regularity and correctness applies when license matters are reviewed. *Constans v. Comm'r of Pub. Safety*, 835 N.W.2d 518, 523 (Minn. Ct. App. 2013) (internal citation omitted). A petitioner has the burden of proving entitlement to reinstatement. *McIntee v. State, Dep't of Pub. Safety*, 279 N.W.2d 817, 821 (Minn.1979). The district court may reverse the Commissioner's licensure determination only if it was fraudulent, arbitrary, unreasonable, or not within the jurisdiction and power of the Commissioner. *Constans*, 835 N.W.2d at 523.

I. PETITIONER HAS MET HER BURDEN OF PROOF AND THE COURT FINDS THE COMMISSIONER'S DECISION IS ARBITRARY AND UNREASONABLE.

The Court finds that Petitioner has met her burden and that the decision by the Commission was arbitrary and unreasonable. The Court finds the testimony of Petitioner was credible and reliable. Petitioner testified that she has been on the Ignition Interlock Program for over three years. In that time, Petitioner has had one violation related to driving outside of her work permit. Petitioner has not had any alcohol related violations and has been sober since 2012. Petitioner testified that she was cleaning her car on the morning of May 24, 2016 and she had not consumed any alcohol on that day or on the previous night.

Respondent claims that Petitioner's petition for reinstatement must be denied because other people had access to Petitioner's car and Petitioner cannot prove that the device was actually malfunctioning on the day in question or any other day that returned a positive test result. Respondent claims that it is possible that someone else had access to Petitioner's car and was driving while the positive tests were recorded. Thus, by

Respondent's logic, it is possible that the tests were not false-positives but were actually positive tests by someone other than Petitioner.

Respondent's argument fails because it in itself is speculative and asks the Court to disregard logic and facts. Petitioner did testify that other people had access to her car and even drove her car on occasion. However, this is not the reason that Respondent canceled Petitioner's license. Even if the Court were to assume that it was someone else driving while the numerous other alleged false positive tests were recorded, that does not negate the obvious malfunctioning of the device. Petitioner has proven that on sixty-nine instances, the results from the Intoxalock Device went from 0.00 BAC up to between 0.013 and 0.027 BAC and then back down to 0.00 BAC within a very short period of time and completely inconsistent with natural alcohol dissipation rates. Regardless of who was driving, these results are not reliable or conclusive evidence of an accurate device.

Respondent's claim that "there is no evidence, beyond speculation, before the Court indicating that Petitioner's interlock device was not working properly" is simply not true. Petitioner provided 189 pages of exhibits and sixty-nine instances of real evidence that the device was not working properly. The readings from the Intoxalock device in this case are clearly unreliable and an unreasonable basis for revocation.

Respondent's second claim is that Petitioner failed to cite a specific contaminant that caused the alleged false positive to occur, and thus Respondent was not given the opportunity to rebut Petitioner's vague claim. This argument is incorrect, as Petitioner is not alleging that a specific environmental contaminant caused the false positive to occur. Instead, Petitioner has established that the Intoxalock Device has repeatedly returned

incorrect messages and clearly erroneous results that are corrected within the next test or within thirty minutes to an hour.

The Court is not finding that all revocations from the Intoxalock device would subject to reversal and reinstatement; however, in this case, there is evidence of repeated malfunctions and errors with the device. For the Commissioner to base the revocation of Petitioner's license solely on those unreliable test results and nothing more, is the very definition of arbitrary or unreasonable. Respondent concedes that the tests from May 24, 2016 show that the BAC "concentration levels do not decline consistent with a 'normal' burn-off rate of 0.015." Respondent's Memorandum of Law, at 3. Even though the decreasing levels are not consistent with the normal burn-off rate, Respondent argues, "Petitioner signed the Last Use Statement in which she agreed that she would not use any product containing alcohol in order to maintain a valid driver's license." *Id.* While it is true that Petitioner signed the Last Use Statement and agreed not to consume alcohol, there is no reliable evidence that Petitioner ever consumed alcohol. If Respondent actually believed that a positive test, regardless of the ensuing burn-off rate, was a positive indication of alcohol consumption, Respondent would have failed Petitioner sixty-nine times before the May 24, 2016 test. Respondent has not made any showing or called into question in the slightest that Petitioner had consumer alcohol.

Petitioner has met her burden of showing that the Commissioner of Public Safety's decision "was fraudulent, arbitrary, unreasonable, or outside of the agency's jurisdiction and power." *Constans*, 835 N.W.2d at 523. In this case, there is not sufficient cause to believe that Petitioner had consumed alcohol or a controlled substance after the

documented date of abstinence. *See* Minn. R. 7503.1700, subp. 6. Petitioner has met her burden of proving that the Commissioner's decision to revoke Petitioner's license was arbitrary and unreasonable given the repeated malfunctions, errors, and false positive reports with the ignition interlock device.

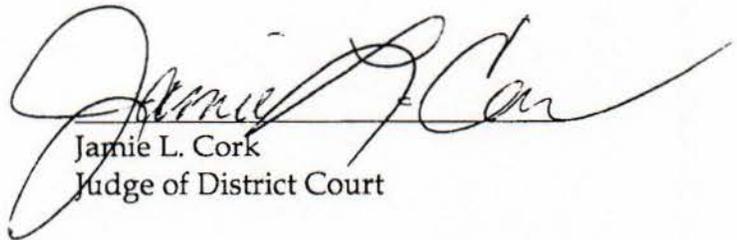
ORDER

1. Petitioner's petition for reinstatement of her driving privileges pursuant to Minn.

Stat. § 171.19 is GRANTED.

Dated: November 22, 2016

BY THE COURT:



Jamie L. Cork
Judge of District Court