2016 IL App (1st) 151153-U

FIFTH DIVISION
September 9, 2016

No. 1-15-1153

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MICHAEL J. BROWN,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellant,	)	Cook County.
	)	
v.	)	No. 14 CH 11916
	)	
JESSE WHITE, Secretary of State, State of Illinois,	)	Honorable
	)	Kathleen M. Pantle,
Respondent-Appellee.	)	Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Justices Lampkin and Burke concurred in the judgment.

O R D E R

¶ 1 *Held*: We affirm the order of the circuit court of Cook County affirming the Secretary of State's decision to deny petitioner's request for reinstatement of driving privileges, or, in the alternative, a restricted driving permit.

¶ 2 Petitioner Michael Brown appeals from the circuit court's order affirming the Secretary of State's (the Secretary) decision to deny him reinstatement of his driving privileges or issuance of a restricted driving permit (RDP). On appeal, petitioner contends that the Secretary's decision to deny him reinstatement was arbitrary and capricious and against the manifest weight of the evidence because he offered evidence that he would be a safe and responsible driver if he was

reinstated. In the alternative, petitioner contends that he proved he will suffer undue hardship if he is not issued an RDP and, if an RDP was issued, he would not endanger the public safety or welfare. We affirm.

¶ 3 The record reveals that on April 26, 1989, petitioner was arrested and later convicted of driving under the influence of alcohol (DUI). On June 18, 2011, petitioner was again arrested and convicted of DUI. For the first arrest, petitioner registered a blood-alcohol content (BAC) of .15, and for the subsequent arrest in 2011, petitioner registered a BAC of .154. On August 3, 2011, petitioner's driver's license and driving privileges were suspended. On October 7, 2011, petitioner's driver's license and driving privileges were revoked. On April 29, 2012, petitioner was arrested and convicted of driving while his license was revoked (DWR).

¶ 4 In March 2014, seeking reinstatement of his driving privileges or an RDP, petitioner requested a formal hearing with the Secretary. At the hearing, petitioner was the only witness. He testified that he lived in Elk Grove Village, Illinois, and worked at EMC Corporation in Lisle, Illinois, which was 30 miles from his home. Petitioner explained that he utilized a car service to get to and from work. Each Monday he takes the car service, stays at a hotel for four nights, and then takes a car service back home on Friday. It would cost him $100 for a cab ride to work. He worked 8 a.m. to 8 p.m. Monday through Friday and, occasionally, on Saturdays, if he had to visit clients who might be as far as 100 miles away. Petitioner testified that, since 2011, he had been taking Lisinopril for hypertension and was told not to consume alcohol while taking the drug. The last time he consumed alcohol was on June 18, 2011. He finished alcohol treatment in

February 2012, and the evaluator did not recommend further treatment. Petitioner went for an assessment in November of 2013, and the evaluator "concurred" that he did not need treatment.

¶ 5 Petitioner further testified that his first DUI was on April 28, 1989. He had been driving for half an hour when he was stopped by police for a lane deviation. Petitioner testified that he was intoxicated, but could not recall if he took a breathalyzer test. When told there was a sworn law enforcement report which indicated he registered a BAC of .15, he "agree[d]" with the report. Petitioner testified that, before this initial arrest, he would mainly drink socially. He would drink three times a week and have three beers. On four occasions prior to the initial arrest, he had consumed five beers. He could not recall ever drinking more than that. He also could not recall how much he drank the night of his first DUI.

¶ 6 On June 18, 2011, the date of petitioner's second DUI arrest, he consumed five drinks of whiskey at a bar in Chicago from 6 p.m. to 11 p.m. Forty-five minutes passed from the time he stopped drinking until the time he was stopped by police. He had driven 12 miles before being stopped for speeding. Petitioner took a breathalyzer test, and the BAC was "0.154." At the time of the arrest, he weighed 275 pounds. Petitioner informed the hearing officer that, in the two-year period prior to the second arrest, he drank much less than he had previous to his first arrest. He claimed he would have one or two beers a week. The night of the second arrest was however "out of the ordinary" and he had not been intoxicated for a year prior to the second arrest.

¶ 7 Petitioner further testified that his heaviest drinking period was when he was in his twenties. He would drink multiple times a week. The night of the second arrest was the most he had ever drunk. After his first arrest, he abstained from alcohol for 11 years. However, from

2001 through 2010, he started drinking again, but only two beers once a week. Petitioner testified that he completely abstained from drinking since the second arrest because drinking and driving is dangerous and alcohol is a substance that impairs one's judgment. Petitioner stated that, if he started drinking again, he would seek treatment.

¶ 8 Petitioner averred that he never had a hangover, an increase or decrease in tolerance to alcohol and never blacked out or passed out as a result of alcohol consumption. He never drank more than he intended. He never started drinking alcohol, lost control and then was unable to stop. When he stopped drinking for a period of time, he had no withdrawal symptoms. He never had any social problems because of drinking. He had no medical or psychological problems caused by his drinking. He did not spend an excessive amount of time or money on drinking. He never binged on alcohol and no one ever complained about his drinking. His work performance was not affected by his drinking.

¶ 9 Petitioner testified that, when he underwent treatment for drinking, it was helpful because it made him realize the dangers of drinking and driving, and he learned that alcohol impaired one's judgment even after only one drink. Petitioner stated he knew the difference between someone who abused alcohol and someone who was an alcoholic. He explained that an alcoholic would hide the fact from others and have problems with others, but he did not have those issues. Petitioner denied being an alcoholic. He testified that, before his first arrest, he abused alcohol but the first DUI taught him some lessons, although "obviously not enough." He stated that he would seek treatment if he started drinking again because that would mean there was something else going on besides drinking. He would want to find out the root cause. Petitioner noted that

his treatment counselors never mentioned or suggested that he might be an alcoholic. He stated that, in his assessment, the evaluator stated he did not need any further treatment. Petitioner acknowledged he was arrested for driving on a "suspended" license.

¶ 10 Petitioner testified that one of the reasons he was seeking reinstatement of his driving privileges was so that he could give back to the community. For example, he was working at a mobile food pantry and going to church. Petitioner noted that, after his first DUI, he attended one open Alcoholics Anonymous meeting on his own.

¶ 11 Police reports showing petitioner's BAC was .15 for the first DUI and .154 for the second, were admitted into evidence, as was a certification of petitioner's conviction for the April 2012 DWR. The hearing officer also admitted into evidence the May 22, 2014, Secretary's continuing recovery plan status report showing that petitioner's level of classification for his alcohol problem and need for treatment was "Level II-Significant Risk."

¶ 12 Petitioner, as part of his exhibits, provided, *inter alia*, three letters. One from his daughter, one from a facility manager at a chapel, and another from a ministry leader discussing his good character and abstinence from alcohol. He also provided the DUI Risk Education Certificate of Completion from the Nicasa treatment center dated December 15, 2011, which reflected that he completed 10 hours of alcohol education. According to a May 22, 2014, evaluation from a "provider" at Nicasa, petitioner was evaluated as "significant risk" because his identified symptoms indicated alcohol abuse. This evaluation further stated that petitioner completed primary treatment at Nicasa on February 6, 2012. The evaluation provided for no new or additional recommendations. Petitioner also included a letter from Nicasa, dated May 22,

2014, which stated that the letter was a "waiver of need for further treatment" for petitioner. The letter further stated that petitioner continued to follow his continuing recovery plan and had been abstinent since June 18, 2011. Petitioner further provided an evaluation from the Illinois Department of Human Services Office of Alcoholism and Substance Abuse. This July 18, 2011, evaluation stated that petitioner scored a 59 on the Mortimer-Filkins test (M-F test) and was thus a "problem drinker."

¶ 13 The hearing officer recommended that petitioner's request for reinstatement or issuance of an RDP be denied. The hearing officer noted that petitioner was seeking reinstatement of full driving privileges, or in the alternative, the issuance of an RDP for employment purposes pursuant to 92 Ill. Admin. Code § 1001.420(i) (2014), and, therefore, "is not required to show an undue hardship in order to obtain this relief." The hearing officer then noted that petitioner had two DUIs and was arrested on April 29, 2012, for driving on a suspended license shortly after his license was revoked. He then found that the BAC of .154 at the time of the second DUI was "inconsistent with the amount reportedly consumed during the time period prior to the arrest," and suggested that petitioner had consumed substantially more alcohol than he reported. The officer found the evidence in the evaluations provided by petitioner "might not be consistent" with the "significant risk" classification contained therein. He also found that the extent of petitioner's alcohol problem was "unclear due to material discrepancies within the evidence." The officer stated that, without a clear and accurate disclosure of petitioner's relationship with alcohol, he was unable to assess petitioner's understanding and acceptance of the nature and extent of his problem with alcohol, the effectiveness of his treatment, and the resulting changes

in lifestyle and consumption patterns. He noted that this assessment was necessary before the Secretary could be convinced that petitioner was a low or minimal risk of repeating his abusive behavior in the future and that the Secretary may disregard evaluations where the underlying evidence was unreliable or incomplete. The hearing officer pointed out that petitioner testified he consumed two beers twice a week prior to his last DUI arrest but the BAC of .154 suggested a greater tolerance to alcohol than would normally be expected given petitioner's reported drinking history, citing *Encyclopedic Handbook of Alcoholism*, pp. 65-66, 359-60 (Pattison and Kaufman, ed. 1982).

¶ 14 The hearing officer held that petitioner's testimony was not characteristic of an individual who had honestly assessed his problematic relationship with alcohol and accepted the negative impact said use produced. Nor was it representative of an individual who had "come to grips with" and effectively addressed or resolved his alcohol problem. The officer stated the degree of self-acceptance of an alcohol problem was a proper consideration in determining whether petitioner had met his burden to show that he would not endanger the public safety and welfare if reinstated to driving privileges or issued an RDP.

¶ 15 The hearing officer noted that the results of the M-F test, on which petitioner scored 59 points, placed him in the "problem drinker" category. The officer noted that the M-F test was a detection and assessment instrument used in the identification of an alcohol problem/alcoholism, citing *1 Recent Developments in Alcoholism*, pp. 377-408 (M. Galanter, ed. 1983). The hearing officer found that petitioner's high M-F test score was inconsistent with his self-reported lack of symptoms from drinking and minimal drinking patterns, as the score indicated a more severe

problem. The officer stated that petitioner's explanation of the nature and causes of his drinking problem was unclear as he continued to minimize his drinking history, amount consumed prior to last DUI and symptoms of alcohol abuse/alcoholism. The hearing officer recommended that petitioner be required to return to his treatment provider for the purpose of addressing these issues and assessing the need for additional treatment.

¶ 16 The hearing officer made the following "conclusions of law": (1) the evidence established that petitioner's abuse of alcohol developed into an alcohol problem, but the extent of that problem was unclear; (2) petitioner failed to provide sufficient evidence to carry his burden for proving that his alcohol problem had been resolved; and (3) given the unresolved issues raised, petitioner failed to carry his burden of proving that he would be a safe and responsible driver and that he would not endanger the public safety and welfare. As petitioner continued to minimize his drinking history, amount consumed prior to his last DUI and symptoms of alcohol abuse/alcoholism, the officer recommended to the Secretary that petitioner be denied driving relief.

¶ 17 The Secretary adopted the hearing officer's recommendation and conclusions, denying petitioner reinstatement of his driving privileges or issuance of an RDP.

¶ 18 On July 21, 2014, petitioner filed a complaint for administrative review in the circuit court of Cook County. The court affirmed the Secretary's decision denying petitioner's petition to reinstate driving privileges or issue an RDP, finding it was not against the manifest weight of the evidence.

¶ 19 On appeal, petitioner contends that the Secretary's decision to deny him driving privileges was arbitrary and capricious and against the manifest weight of the evidence because he offered evidence that he would be a safe and responsible driver if reinstated. Petitioner contends that he completed all recommendations required by the Secretary for treatment, his updated alcohol evaluation certified that no new or additional treatment was recommended, and he has completely abstained from alcohol since June 18, 2011.

¶ 20 In an administrative review appeal, this court reviews the final decision of the agency, here the Secretary, not the judgment of the circuit court. *Campbell v. Department of Personnel, Secretary of State*, 2013 IL App (4th) 120610, ¶28. On questions of fact, we deem the agency's findings and conclusions to be *prima facia* true and correct, and we will overturn the agency's decision only if it is against the manifest weight of the evidence (*City of Sandwich v. Illinois Labor Relations Board*, 406 Ill. App. 3d 1006, 1008 (2011) (citing *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 210-211 (2008))), or was the result of an arbitrary or capricious exercise of the agency's authority (*Clark v. White*, 343 Ill. App. 3d 689, 693 (2003)). A determination is against the manifest weight of the evidence if the opposite conclusion is clearly evident. *City of Sandwich*, 406 Ill. App. 3d at 1008. A decision is arbitrary and capricious if the Secretary relies upon factors the legislature did not intend him to consider, fails to consider an issue, or offers an explanation for his decision that runs counter to the evidence or is so implausible it could not possibly be the result of the exercise of administrative expertise. *Clark*, 343 Ill. Ap. 3d at 693-94. Questions of law we review *de novo*, granting deference to the agency. *City of Sandwich*, 406 Ill. App. 3d at 1008. Mixed questions of law and

fact are examined under the clearly erroneous standard. *Id.* An agency's decision is clearly erroneous when the reviewing court is left with a firm and definite conviction the agency has committed a mistake. *Id.*

¶ 21 Here, petitioner seeks reinstatement of his driving privileges, or, in the alternative, an RDP. The Illinois Vehicle Code grants the authority to the Secretary to reinstate driving privileges or to issue an RDP. 625 ILCS 5/6-208 (West 2012). However, once driving privileges have been revoked, the restoration of such privileges is not automatic. *Sanchez v. Ryan*, 315 Ill. App. 3d 1079, 1083 (2000); 625 ILCS 5/6-208(b) (West 2012) (any person whose license or driving privileges has been revoked "shall not be entitled to have such license, permit, or privilege renewed or restored"). Instead, the person seeking reinstatement of driving privileges or issuance of an RDP must file a petition requesting such. 625 ILCS 5/6-208(b) (West 2012). The Secretary shall not issue a license or RDP until the petitioner has had a hearing pursuant to the Code and appropriate administrative rules and has proven to the Secretary's satisfaction, "after a review or investigation" of the petitioner, that to grant driving privileges "will not endanger the public safety or welfare." 625 ILCS 5/6-208(b) (West 2012).

¶ 22 The Secretary has adopted administrative regulations setting forth the requirements a petitioner must fulfill before a driver's license can be reinstated or an RDP issued. *Cisneros v. White*, 337 Ill. App. 3d 93, 103 (2003). These Illinois Administrative Code provisions (Administrative Code) have the force and effect of the law. *Id.* The Illinois Administrative Code requires that, if the loss of driving privileges is alcohol-related, the petitioner, to be entitled to reinstatement of driving privileges or an RDP must prove, by clear and convincing evidence, that

the four following distinct conditions exist: 1) he no longer has a problem with alcohol; 2) he is a low or minimal risk to repeat past abusive behavior and operate a motor vehicle while under the influence of alcohol; 3) he has complied with all other standards as specified in the regulations; and 4) the granting of driving privileges will not endanger the public safety or welfare. *Sanchez*, 315 Ill. App. 3d at 1082-83; 92 Ill. Admin. Code §§ 1001.440(b), 1001.420(e), 1001.430(c) (1991)).

¶ 23 In making the decision of whether a petitioner should be granted driving privileges, the Secretary considers numerous factors, including, *inter alia*: (1) the frequency, type and severity of traffic violations; (2) whether the petitioner has driven while suspended or revoked; (3) efforts at rehabilitation or reform of past driving practices; (4) demeanor of petitioner at hearing; (5) credibility of petitioner at hearing; (6) credibility and weight of petitioner's documentary evidence; and (7) petitioner's total driving record. *Grams*, 263 Ill. App. 3d at 396; 92 Ill. Admin. Code § 1001.420(e) (RDP), 1001.430(c) (reinstatement) (2014). Evidence that shall be considered in determining whether petitioner has met his burden of proof and overcome the presumption of a current alcohol problem includes, but is not limited to, the similarity of circumstances between alcohol-related arrests, length of alcohol abuse pattern, degree of self-acceptance of alcohol problem, and prior relapses from attempted abstinence. 92 Ill. Admin Code § 1001.440(d) (2014). Through the hearing process, the Secretary must determine the nature and extent of the alcohol problem, whether petitioner has resolved it, and whether he will be a safe and responsible driver. 92 Ill. Admin. Code § 1001.400(b)(2) (2014).

¶ 24 If a petitioner has more than one DUI conviction, there is a rebuttable presumption that petitioner "suffers from a current alcohol/drug problem and should, therefore, be classified at least Significant Risk." 92 Ill. Admin. Code § 1001.440(c) (2014). Here, petitioner has two DUIs, one in 1989 and another in 2011, and is therefore classified as "Significant Risk," meaning petitioner must document successful completion of an alcohol driver risk education course, which cannot be waived, and completion of the treatment recommended by the evaluator. 92 Ill. Admin. Code § 1001.440(b)(3) (2014).

¶ 25 Based on the two DUIs, petitioner's license was revoked on October 7, 2011. Only six months later, he was arrested and subsequently convicted for DWR. When, as here, the underlying revocation was for a DUI, DWR is treated by the legislature as one of the most serious driving offenses one can commit in the absence of bodily injury. *Reynolds*, 188 Ill. App. 3d at 75-76. Despite the seriousness of the DWR conviction, petitioner does not address it in his brief. Neither his testimony, nor any of the letters submitted into evidence at the hearing made any reference to or provided any explanation for the DWR conviction. Viewing the evidence of petitioner's disregard for the laws protecting the public in the light most favorable to the Secretary, the determination that petitioner failed to carry his burden of proving that he would be a safe and responsible driver and would not endanger the public safety and welfare is not against the manifest weight of the evidence. See *Id.* at 76-77.

¶ 26 The hearing officer concluded that the Nicasa evaluator's determination that petitioner did not need further treatment was suspect and unreliable as there were significant inconsistencies among the evaluations, petitioner's testimony, the high BAC reading, the high M-F score and the

significant risk finding in the continuing recovery plan status report. The Illinois Administrative Code provides that significant discrepancies or inconsistencies among or between alcohol use history recited in an alcohol evaluation and the petitioner's testimony at a driver's license hearing or other evidence admitted at a hearing renders suspect and unreliable a service provider's classification of a petitioner's alcohol problem. 92 Ill. Admin. Code § 1001.400(b)(3) (2014). The reviewing courts have routinely held that the Secretary may rely on the inconsistencies in the evidence as a basis for denying driving relief. See *e.g. Sanchez*, 315 Ill. App. 3d at 1084; *Grams*, 263 Ill. App. 3d at 397-98. The administrative body weighs the evidence, makes credibility determinations and resolves conflicting evidence. *Sanchez*, 315 Ill. App. 3d at 1084. Further, alcohol evaluations are not dispositive of whether petitioner will not endanger the public safety and welfare if reinstated to driving privileges, and not the sole factor to be considered. *O'Neil*, 301 Ill. App. 3d at 399.

¶ 27 The high M-F score indicating that petitioner was a "problem drinker," the finding in the continuing recovery plan status report that petitioner was a "significant risk" and his prior BAC results cast doubt on petitioner's credibility. He claimed to have had four to five drinks the night of his second DUI arrest, but his BAC was .154, almost twice the legal limit. The hearing officer's finding that this high BAC suggested that petitioner had drunk substantially more alcohol than he claimed was therefore not against the manifest weight of the evidence. By continuing to substantially understate the amount he drank at his last arrest, petitioner demonstrated his ongoing minimization of and inability to acknowledge the history and extent of his drinking problem. See *Sanchez*, 315 Ill. App. 3d at 1083. As petitioner's BAC results

reflected heavier drinking than he reported, his denial or minimization of his drinking habits suggested, as the hearing officer determined, an unresolved alcohol problem. *Id.* Based on the inconsistencies in the evidence and petitioner's minimization of his drinking problem, we find the Secretary's conclusion that petitioner failed to satisfy his burden to demonstrate by clear and convincing evidence that he does not have a current problem with alcohol, is at a low or minimal risk of repeating his operation of a motor vehicle while under the influence of alcohol and that restoring his driving privileges would not endanger the public safety or welfare was not against the manifest weight of the evidence. *Id.* at 1082-86.

¶ 28 Petitioner's cited authority does not require a contrary result. Three of his four cited decisions (*Murdy v. Edgar*, 103 Ill. 2d 384 (1984); *Koesterer v. Edgar*, 143 Ill. App. 3d 832 (1984); and *Franz v. Edgar*, 133 Ill. App. 3d 513 (1985)) preceded the 1986 amendments to the Administrative Code. By these amendments, the administrative code sets forth a petitioner's burden to show that he does not have a current alcohol problem, is a low or minimal risk to repeat his past abusive behaviors and the operation of a motor vehicle while under the influence of alcohol and has complied with all other standards as specified in the regulations. 92 Ill. Admin. Code §§ 1001.440(b) (2014). They also provide additional factors to be considered, such as the length of alcohol abuse pattern, the degree of self-acceptance of alcohol problem and prior relapses from attempted abstinence. 92 Ill. Admin. Code §§ 1001.440(b), (d) (2014).

¶ 29 Since the 1986 amendments, courts have recognized that, despite evidence of abstinence and completed treatment, petitioners may fail to meet their burden in proof of other factors, including inconsistencies between the petitioner's testimony regarding his alcohol consumption

or problem and other evidence. See *Sanchez*, 315 Ill. App. 3d at 1082-85; see also *Murdy v. Edgar*, 103 Ill. 2d 384, 393-94 (1984) (the petitioner met his burden where he only showed abstinence and completion of treatment); 92 Ill. Admin. Code § 1001.440(b), amended at 10 Ill. Reg. 4558 (eff. Mar. 18, 1986). Further, none of petitioner's cited cases involved a petitioner who was convicted of DWR after his revocation based on DUIs, which, as noted above, is considered one of the most serious driving offenses one can commit in the absence of a bodily injury. *Reynolds*, 188 Ill. App. 3d at 75.

¶ 30 Petitioner also cites to *Wixon v. Edgar*, 215 Ill. App. 3d 490 (1991), for the proposition that he should have full driving privileges reinstated. In *Wixon*, 215 Ill. App. 3d at 494-95, the reviewing court found the Secretary erred in denying reinstatement. However, unlike petitioner here, the petitioner in *Wixon* had no driving violations in the years after his license was revoked on the basis of his second DUI conviction. Further, he was classified as "Level 1 – non problematic use," not "Significant Risk," as is petitioner here. Also, unlike here, the evidence in *Wixon* demonstrated that petitioner had recognized his drinking problem and controlled it. *Wixon*, 215 Ill. App. 3d at 497-98.

¶ 31 Moreover, unlike in *Wixon*, there are multiple inconsistencies among the documentary evidence presented here. For example, an alcohol evaluation recommends no further treatment but indicates that petitioner had a high M-F score and was a "Significant Risk." There are also inconsistencies between the evidence and petitioner's testimony, *i.e.*, petitioner's minimization of his drinking history and alcohol problems despite the significant risk finding, the high M-F score, and the high BAC readings. The inconsistencies here raise the issue identified by the hearing

officer: whether petitioner had been truthful regarding his drinking history and alcohol problem and had "honestly assessed his problematic relationship" with alcohol and accepted its negative impact. In *Wixon*, the petitioner showed to the hearing officer's satisfaction that this issue had been resolved. Here, the inconsistencies demonstrate the issue has not been resolved.

¶ 32 Petitioner argues for the first time on appeal, citing to *Murdy,* 103 Ill. 2d 384, that the hearing officer erred by citing to the *Encyclopedic Handbook of Alcoholism*, pp. 65-66, 359-60 (Pattison and Kaufman ed. 1982), and *1 Recent Developments in Alcoholism*, pp. 377-408 (M. Galanter ed. 1983), and failing to explain the nexus between the handbook and his conclusion. Because petitioner did not assert this issue below, he forfeited it. *Rispoli v. Police Board*, 188 Ill. App. 3d 622, 634 (1989).

¶ 33 Furthermore, there is no longer a requirement, as petitioner suggests, that these publications be introduced and substantiated through expert testimony. The Administrative Code was amended in 1986, after *Murdy* (1984) to provide that, in reinstatement proceedings, the technical rules of evidence shall not apply (92 Ill. Admin. Code § 1001.100(e)(1)), and the Secretary may take official notice of "generally recognized technical or scientific facts within the [Department of Administrative Hearings of the Office of the Secretary of State]'s specialized knowledge." 92 Ill. Admin. Code § 1001.100(n) (2014). See *e.g.*, *Grams*, 263 Ill. App. 3d at 394 (hearing officer relied on *Encyclopedic Handbook of Alcoholism* 65-66, 359-60 (Pattison & Kaufman ed. 1982), in finding that petitioner's BAC at time of arrest was inconsistent with the amount of alcohol he acknowledged consuming and indicated a greater tolerance to alcohol than

would normally be expected given his reported drinking history). The hearing officer properly considered these texts.

¶ 34 In light of the above, the Secretary's determination that petitioner did not meet his burden to show that he would be a safe and responsible driver and that he would not endanger the public safety and welfare was not against the manifest weight of the evidence. Further, nothing in the record demonstrates that the hearing officer or Secretary relied upon factors the legislature did not intend them to consider, failed to consider an issue, or offered an explanation for their decision that runs counter to the evidence or is so implausible it could not possibly be the result of the exercise of administrative expertise such that the decision was arbitrary or capricious. *Clark*, 343 Ill. Ap. 3d at 693-94. Therefore, the Secretary properly denied petitioner's request for reinstatement of his driving privileges.

¶ 35 The Secretary also properly denied petitioner's request for an RDP. Petitioner argues he showed undue hardship because he is required to hire a driver to drive him to and from work at a cost of $100 each way, during his work week he has to rent a hotel room for four nights at a total cost of $400, his job assignments require out of town travel and driving clients, and there are no alternative means of public transportation available to him in his employment related travel.

¶ 36 To be granted an RDP where a petitioner *is not yet eligible* for reinstatement of driving privileges, the petitioner must also demonstrate "undue hardship" will result from the denial of the RDP. 92 Ill. Admin. Code § 1001.420(a)(1) (2014); *Grams v. Ryan*, 263 Ill. App. 3d 390, 396 (1994). Here, petitioner is eligible for reinstatement as more than one year has passed since his license was revoked. 625 ILCS 5/6-208(b)(1) (West 2012); 92 Ill. Admin. Code § 1001.420(a)(2)

(2014); see also *Schultz v. Edgar*, 170 Ill. App. 3d 36, 39 (1988) (plaintiff not eligible for full reinstatement of driving privileges until the expiration of one year from the date of revocation). As the hearing officer found, petitioner, therefore, need not show undue hardship for an RDP. That said, he was still required to prove that the granting of driving privileges will not endanger the public safety or welfare, under the same factors used to determine reinstatement of full driving privileges. *Sanchez*, 315 Ill. App. 3d at 1082-83; *Grams*, 263 Ill. App. 3d at 396-97; 92 Ill. Admin. Code §§ 1001.440(b), 1001.420(a), (e), 1001.430(c) (1991)). As explained above, petitioner has not established this requisite by clear and convincing evidence.

¶ 37 Accordingly, the Secretary's finding that petitioner failed to satisfy his burden to prove that restoring his driving privileges or issuing him an RDP would not endanger the public safety or welfare was neither against the manifest weight of the evidence nor arbitrary and capricious. Therefore, we affirm the judgment of the circuit court of Cook County.

¶ 38 Affirmed.