



credibility and reputation of [the Department] and amounted to violations of Sections 7.05.2 paragraph 2, and 7.05.3 C.1.c.-d of Georgia Department of Public Safety Policy Statement No. 7.05. The Order provided that Mr. [REDACTED] could request a review of his suspension pursuant to Policy Statement No. 7.05. (Testimony of [REDACTED] [REDACTED] Order and Notice of Suspension from the Georgia Department of Public Safety Wrecker Rotation Lists dated December 14, 2006).

4. After Mr. [REDACTED] requested a review of the Initial Decision, DPS contacted him and referred him to its policy outlining the review process. On January 11, 2007, DPS informed Mr. [REDACTED] that he had until February 4, 2007 to submit any additional information in the form of documents or other items that he wished DPS to consider in its review to be conducted on March 4, 2007. Mr. [REDACTED] submitted no information to DPS by the February 4 deadline. (Final Decision dated March 22, 2007; Letter from DPS Legal Services dated November 6, 2007).

5. Mr. [REDACTED] suspension from the Wrecker Rotation List became final with DPS's issuance of a Final Decision on March 22, 2007. Petitioner was notified that he would be eligible to be considered for reinstatement three years after the date of the issuance of the Initial Decision. No record was submitted indicating any judicial appeal from DPS's Final Decision. (Final Decision dated March 22, 2007).

*Request for Reinstatement and Documentation submitted*

6. On or about September 30, 2013, Mr. [REDACTED] wrote a letter to DPS, seeking reinstatement onto the Wrecker Rotation List. DPS Legal Services informed Mr. [REDACTED] that, in order to be reconsidered for placement on the 2014 Wrecker Rotation List, he would have to provide letters of recommendation from local law enforcement agencies "concerning the compliance of [his] services with wrecker service standards" and documentation showing that he had been in compliance with Georgia law since the suspension. Mr. [REDACTED] was given until October 14, 2013 to submit this information to Captain William Hitchens. (Exhibit R-2).

7. On or about October 15, 2013, Mr. [REDACTED] submitted two letters to DPS: one from Corporal Len Schmauch of the Brunswick Police Department and another from Jerry Youngblood of Federal Law Enforcement Training Centers (FLETC). Corporal Schmauch wrote in his letter that Petitioner had been on the Brunswick Wrecker Rotation List for the past three years, during which time "he and his company [had] been in compliance with applicable city codes concerning wrecker services." The letter from Mr. Youngblood provides simply that Mr. [REDACTED] had been towing vehicles for FLETC for "three (3) years," during which time he and his company had been in compliance with applicable state laws. The letter is not printed on letterhead and Mr. Youngblood does not provide his title or give any indication as to the capacity in which he works for FLETC. (Testimony of Major Grier; Exhibit R-2).

8. Mr. [REDACTED] enclosed a cover letter with the documentation submitted to Captain Hitchens in which he wrote that he had made an unsuccessful attempt to obtain a letter of recommendation from Sheriff E. Neal Jump. Mr. [REDACTED] also enclosed a typed statement to the effect that a request for a letter of recommendation had been hand-delivered to Sheriff Jump on October 8, 2013. (Exhibit R-2).

*DPS's Review and Denial of Mr. [REDACTED] application for reinstatement*

9. Major Eddie Grier is a Commanding Officer of the Georgia State Patrol. He reviewed Mr. [REDACTED] file that included the history of his suspension; the documentation Mr. [REDACTED] submitted to DPS with his application for reinstatement; and an investigatory report indicating that Mr. [REDACTED] had been suspended from the Glynn County Wrecker Rotational Call List on July 22, 2013.<sup>1</sup> (Testimony of Major Grier; Exhibit R-2). (Testimony of Major Grier; Exhibit R-4).

10. In the absence of a written agency procedure indicating data that should be considered on an application for reinstatement, Major Grier opined that, ordinarily, satisfactory applications for reinstatement onto the Wrecker Rotation List should include letters from agency heads, such as the Sheriff or Chief of Police. Mr. [REDACTED] submitted letters from a corporal with the Brunswick Police Department and an individual with an unidentified role at FLETC. Further, Major Grier opined that in determining whether an applicant should be reinstated, he would expect attestations of strong moral character. Although the letters provided by Mr. [REDACTED] stated that Mr. [REDACTED] had been compliant with the law, they offered insufficient insight into his reputation or character. Mr. [REDACTED] application included no letters of support from the community that could be further indicia that the applicant is ready for reinstatement. The circumstances underlying Mr. [REDACTED] suspension from the Glynn County Wrecker Rotational List are not indicated and are not final inasmuch as Mr. [REDACTED] is currently appealing that decision. Even so, the report further persuaded Major Grier that Mr. [REDACTED] application for reinstatement lacks evidence to support a decision to allow him to seek reinstatement to DPS's Wrecker Rotation List. (Testimony of Major Grier; Exhibits R-2 and R-4).

11. Major Grier concluded that Mr. [REDACTED] had failed to offer persuasive evidence in support of his reinstatement and denied Mr. [REDACTED] request to be reinstated onto the DPS Wrecker Rotation Lists. On October 28, 2013, DPS notified Mr. [REDACTED] of its determination and that there would be no further review. Mr. [REDACTED] requested a hearing on or about November 22, 2013. (Exhibit R-2; Petitioner's Request for Hearing dated November 22, 2013).

*Mr. [REDACTED] arguments in support of his application*

12. Regarding the four matters upon which DPS's permanent suspension was based, Mr. [REDACTED] asserts that the specific criminal charge in Violation (1) did not result in a conviction and that no criminal charges were ever filed regarding Violations (2), (3) and (4). (Testimony of [REDACTED] Exhibit R-2).

13. At the hearing, Petitioner asserted that the allegations leading to his original suspension from the Wrecker Rotation Lists were baseless and no longer existed as a basis for exclusion. Petitioner attributed his suspension and continued exclusion from the GPS Wrecker Rotation

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<sup>1</sup> During the review period, Major Grier contacted Captain Hitchens and instructed him to research Mr. [REDACTED] reputation with local authorities in the city and county where Mr. [REDACTED] worked. The Glynn County Administrator reported to Captain Hitchens that Petitioner had been suspended from the Glynn County Wrecker Rotational Call List on July 22, 2013. Captain Hitchens relayed the Administrator's report to Major Grier, who included the information in his review. (Testimony of Major Grier; R-4).

Lists to animosity harbored against him by local law enforcement, such as Sheriff Jump. Petitioner, through the argument of counsel, contended that the DPS's decision not to reinstate him was "arbitrary and capricious" and amounted to a violation of Due Process. Mr. [REDACTED] testimony regarding animosity is not corroborated or otherwise supported by the evidence presented. (Testimony of [REDACTED] [REDACTED] Record as a whole).

14. The parties did not dispute that Mr. [REDACTED] meets, or is capable of meeting, the general criteria for inclusion outlined in DPS Policy 7.05.3 (B) (2) (a through h) and the denial of the application was not based on failure or inability to comply with other general criteria indicated in DPS Policy 7.05.3 (B) generally. (Representation by respective counsel).

### III. Conclusions of Law

1. DPS's policy manual provides as follows:

A business or business owner or operator subject to a permanent suspension shall be eligible to be reconsidered for reinstatement after a period of three years. *Whether to permit a suspended service to apply for inclusion on the rotation list is a determination which is completely within the discretion of the Department.* (Emphasis added).

DPS Policy Manual, Policy No. 7.05(C)(11). Inasmuch as Mr. [REDACTED] permanent suspension occurred more three years ago, his application for reinstatement is authorized. The discretionary power of DPS to approve or deny such an application is clear; however, no written procedures further outline the documentation that is required to support such an application.

4. DPS has a strong interest in ensuring that companies and individuals with whom it operates "conduct themselves in a professional manner." DPS Policy Manual, 7.05.2. Accordingly, it is essential that DPS maintain discretion over who is included on the Wrecker Rotation List as provided in Policy No. 7.05(C)(11).

5. Mr. [REDACTED] failed to demonstrate that DPS's decision to deny his request for reinstatement was in any way "arbitrary" or "capricious."<sup>2</sup> On the contrary, DPS introduced testimony that it reached the decision not to reinstate Mr. [REDACTED] only after conducting a review process, during which Mr. [REDACTED] was given the opportunity to submit documentation in support of his request. DPS's decision to deny Mr. [REDACTED] request was based upon the reasonable conclusion that the documentation in support of Mr. [REDACTED] reinstatement was insufficient and upon evidence that Mr. [REDACTED] had recently been suspended from the Wrecker Rotation List of a local authority. Major Grier was under no obligation to investigate the validity of Mr. [REDACTED] suspension from

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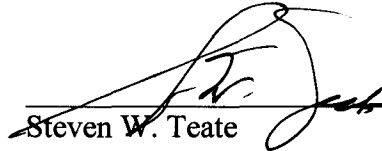
<sup>2</sup> The undersigned is not authorized to resolve constitutional challenges to statutes or to DPS's rules and regulations. Ga. Comp. R. & Regs. 616-1-2-.22(3). Moreover, the evidence relating to the substance of the underlying facts giving rise to Petitioner's original suspension is beyond the scope of this Decision. The sole issue for the undersigned to determine is whether DPS appropriately denied Petitioner's request for reinstatement onto DPS's Wrecker Rotation Lists.

the Glynn County rotation list; substantive evidence that Mr. [REDACTED] had again been suspended from a wrecker rotation list merited the reasonable conclusion that his reinstatement was inappropriate at that time. DPS's decision to deny Mr. [REDACTED] request for reinstatement was a reasonable exercise of its discretionary authority. Even without inclusion of the information regarding Mr. [REDACTED] recent exclusion from the Glynn County rotation list, Major Grier could reasonably conclude that Mr. [REDACTED] application contained insufficient information to allow reinstatement. As an applicant for a permit, Mr. [REDACTED] bears the initial burden of proof. Ga. Comp. R. & Regs. 616-1-2-.07 (1) (c). He has failed to meet that burden.

#### IV. Decision

**IT IS ORDERED** that DPS's action in denying Petitioner's request for reinstatement on the GSP Wrecker Rotation Lists maintained by DPS is hereby **AFFIRMED**.

**SO ORDERED**, this 9<sup>th</sup> day of May 2014.

  
Steven W. Teate  
Administrative Law Judge

