

**COMMONWEALTH OF MASSACHUSETTS
PEACE OFFICER STANDARDS AND TRAINING COMMISSION**

In the Matter of)	Case No. 23-006-S
)	(PI-2022-12-13-004)
Darren Senecal)	

FINAL DECISION

Pursuant to 555 CMR 1.10(1), a Hearing Officer was assigned to conduct an adjudicatory proceeding regarding this matter on behalf of the Peace Officer Standards and Training Commission (“Commission”).

Pursuant to M.G.L. c. 30A, §§ 11(7) and (8) and 555 CMR 1.10(4)(e)(2), the Hearing Officer issued the attached Initial Decision and Order to the Commission, and the parties had thirty (30) days to provide written objections to the Commission. No objections were received.

After careful review and consideration, the Commission voted to affirm and adopt the Initial Decision of the Hearing Officer.

For the above reasons, the Motion for Default and Final Decision filed by the Division of Police Standards and the relief sought therein are hereby **granted**. The Commission finds that Respondent Darren Senecal knowingly filed a written police report containing a false statement and created forty police log entries containing false statements regarding the Respondent’s patrol activities. The Commission also finds that in filing the police report and police log entries containing false statements, the Respondent engaged in a pattern of unprofessional conduct that may escalate. The Respondent’s certification is hereby revoked. The Executive Director shall take the necessary steps to publish the Respondent’s name in the National Decertification Index. This is the final decision of the Commission. M.G.L. c. 30A, §§ 11(8) and 13; 555 CMR 1.10(4)(e).

By vote of the Commission (no recusals) on September 14, 2023.

A party aggrieved by this decision may commence an appeal to the Superior Court within thirty (30) days in accordance with M.G.L. c. 30A, § 14, to the extent allowed by law. After initiating proceedings for judicial review in Superior Court, the Appellant, or his attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice to: Darren Senecal, Respondent
Timothy D. Hartnett, Esq., Commission Enforcement Counsel
Mount Wachusett Community College Police Department

Date Issued: September 14, 2023.

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PEACE OFFICER STANDARDS AND TRAINING COMMISSION**

In the Matter of)	Case No. 23-006-S
)	(PI-2022-12-13-004)
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Appearance for Petitioner:
Timothy D. Hartnett, Esq.
Commission Enforcement Counsel

Appearance for Respondent:
Darren Senecal, Pro se

Hearing Officer:
Hon. Charles J. Hely (Ret.)

INITIAL DECISION
(M.G.L. c. 30A, § 11(8); 555 CMR 1.10(4)(e)(2))

Introduction

At issue in this matter is whether this proceeding brought by the Massachusetts Peace Officer Standards and Training Commission (“Commission”) should now terminate with a default decision in the Commission’s favor, pursuant to Massachusetts General Laws Chapter 30A, § 10(2), 801 CMR 1.01(7)(a), and 555 CMR 1.10(4), in light of the failure of Darren Senecal (“Respondent”) to answer, appear, and defend the allegations of misconduct against him in the Order to Show Cause (“OTSC”) and in view of his lack of response to mailings delivered to him by the Division of Police Standards (“Division”). For the reasons stated below, the Hearing Officer recommends that the Commission issue a decision to finalize this Initial Decision, grant the Division’s Motion for Default and Final Decision (“Motion”), and proceed to determine what discipline should be imposed against the Respondent.

Procedural History

The Division served the Respondent with an OTSC, dated April 24, 2023, by United Parcel Service (“UPS”). (Ex. A – OTSC; Ex. B – OTSC Cover letter). The UPS tracking information indicates that the OTSC was delivered on April 25, 2023, to the Respondent’s last known address¹ at the side door, at 6:14 p.m. (Ex. C – OTSC UPS Delivery Notification). By operation of law, as established below, the Commission may presume that the Respondent received the OTSC and cover letter.

The OTSC and cover letter contained the allegations against the Respondent and notification of the obligation to file an answer or otherwise respond to the allegations within twenty-one (21) days. (Exs. A and B). The OTSC notified the Respondent that, if a responsive and timely answer was not filed, the Commission may act. Particularly, that the Commission would enter a Final Decision and Order that assumes the truth of the allegations in the OTSC and may take action against the Respondent’s certification, including granting, in full, the relief contemplated in the OTSC. (Ex. A). The Respondent failed to file a responsive and timely answer to the OTSC. (Ex. D – Motion for Default).

The Division sent the Motion to the Respondent, dated May 25, 2023, by UPS. (Ex. D). The UPS tracking information indicates that the Motion was delivered on May 26, 2023, to the Respondent’s same last known address at the front door, at 4:52 p.m. (Ex. E – Motion UPS Delivery Notification). By operation of law, the Commission may presume that the Respondent received the Motion. The Hearing Officer finds that the OTSC was attached as an exhibit to the Motion. The Respondent failed to respond to the Motion and the OTSC.

¹ The Division based this information on the Respondent’s communication through an e-mail confirming he received the notice of the preliminary inquiry at that address. Accordingly, the Division sent a copy of the OTSC both by e-mail and to the same address to which it sent the notice of preliminary inquiry. (Ex. A).

Allegations Contained in the OTSC

1. On October 25, 2022, the Respondent's appointing agency the Mount Wachusett Community College Police Department submitted a final report to the Commission concluding that the Respondent:

- (i) had created a fraudulent entry in a police report (1 count on July 29, 2021);
- (ii) had created fraudulent entries in nightly campus police logs (56 counts between May 19, 2021, and July 31, 2021);
- (iii) willfully neglected or not performed one or more assigned duties (56 counts between May 19, 2021, and July 31, 2021);
- (iv) was dishonest in the performance of assigned duties (56 counts between May 19, 2021, and July 31, 2021); and
- (v) was dishonest in an internal investigation (1 count).²

2. On December 13, 2022, pursuant to 555 CMR 1.02(3)(b), the Commission directed the Division to open a preliminary inquiry to investigate the allegation that the Respondent deliberately created false entries in an official police report and in official police logs, and therefore is subject to revocation of his police certification. M.G.L. c. 6E, § 10(a)(viii).

3. As of December 13, 2022, pursuant to St. 2020, c. 253, § 102, an Act Relative to Justice, Equity, and Accountability in Law Enforcement in the Commonwealth, the Respondent was certified as a police officer.

4. On May 25, 2023, the Division sent the Motion to the Respondent based on his failure to answer, appear, or defend the allegations of misconduct against him in the OTSC. The Motion notified the Respondent that this would result in the Commission taking action. (Ex. D).

² During the internal investigation, the Respondent maintained that he conducted the patrols in accordance with his police logs, despite video surveillance confirming that the Respondent was in the student lounge during the times he claimed to have conducted exterior foot patrols.

Legal Basis for Commission Action

5. Pursuant to M.G.L. c. 6E, § 3(a):
The [C]ommission shall have all powers necessary or convenient to carry out and effectuate its purposes, including, but not limited to, the power to:
(1) act as the primary civil enforcement agency for violations of [chapter 6E]; . . .
(4) deny an application or limit, condition, restrict, revoke or suspend a certification, or fine a person certified for any cause that the [C]ommission deems reasonable; . . .
(23) restrict, suspend or revoke certifications issued under [chapter 6E];
(24) conduct adjudicatory proceedings in accordance with chapter 30A;
6. Pursuant to M.G.L. c. 6E, § 10(a)(viii), “[t]he [C]ommission shall, after a hearing, revoke an officer’s certification if the [C]ommission finds by clear and convincing evidence that . . . the officer knowingly file[d] a written police report containing a false statement or commit[ted] perjury”
7. Pursuant to M.G.L. c. 6E, § 10(b)(iii), “[t]he [C]ommission may, after a hearing, suspend or revoke an officer’s certification if the [C]ommission finds by clear and convincing evidence that the officer . . . has a pattern of unprofessional police conduct that [the] [C]ommission believes may escalate.”
8. Pursuant to M.G.L. c.6E, § 10(g), the Commission shall publish any revocation order and findings and shall provide all revocation information to the National Decertification Index.
9. Pursuant to M.G.L. c. 6E, § 10(h), the Commission may institute a disciplinary hearing after an officer’s appointing agency has issued a final disposition on the alleged misconduct.

Notice

The Respondent was notified that if he did not file an answer or otherwise respond to the allegations in the OTSC in a responsive and timely manner, the Commission could enter a Final Decision and Order that assumes the truth of the allegations in the OTSC, and may take particular action against his certification, including granting, in full, the action contemplated in the OTSC. See Lawless v. Bd. of Registration in Pharmacy, 466 Mass. 1010, 1010 n.1 (2013)

(informing pharmacist that, upon default, “board could enter a final decision accepting as true the allegations contained in the show cause order.”); see also University Hosp., Inc. v. Massachusetts Comm’n Against Discrimination, 396 Mass. 533, 539 (1986) (holding that default provision did not violate due process standards, as it “afford[ed] the [R]espondent reasonable procedural safeguards for notice and opportunity to be heard”); Productora E Importadora De Papel S.A. De C.V. v. Fleming, 376 Mass. 826, 833-35 (1978) (ruling of default establishes the truth of the facts alleged in the complaint). Despite being afforded the opportunity to do so, the Respondent has failed to file an answer, request an adjudicatory hearing, or otherwise respond.

By a cover letter dated May 25, 2023, the Division moved for Default Judgement and Final Decision by serving the Motion, with exhibits A, B, and C attached, by UPS with tracking information indicating delivery at the front door of the Respondent’s last known address. Under Massachusetts case law, the “depositing of a letter in the post office, properly addressed, postage prepaid, to a person at his place of business or residence is prima facie evidence that it was received in the ordinary course of mails.” Eveland v. Lawson, 240 Mass. 99, 103 (1921) (emphasis added); see also Prudential Trust Co. v. Hayes, 247 Mass. 311, 314 (1924) (“A presumption of the receipt of a letter arises when it is deposited in the mails.”); Hobart-Farrell Plumbing & Heating Co. v. Klayman, 302 Mass. 508, 509 (1939) (“The mailing of a letter properly addressed and postpaid does not merely create a presumption but rather constitutes prima facie evidence of delivery to the addressee” (citations omitted)). By operation of law, the Commission may presume that the Respondent received the Motion that was mailed through a delivery service, postage paid, and delivered to the front door.

Exhibits

In ruling on this matter, the Hearing Officer has considered the Motion filed by the Division and the following exhibits:

Exhibit A: OTSC, dated April 24, 2023.

Exhibit B: OTSC Cover Letter, dated April 24, 2023.

Exhibit C: OTSC UPS Delivery Notification, dated April 25, 2023.

Exhibit D: Motion for Default, dated May 25, 2023.

Exhibit E: Motion for Default UPS delivery Notification, dated May 26, 2023.

The Hearing Officer takes administrative notice of all papers filed in this case, as well as Chapter 6E and Commission regulations.

Discussion

Agencies are specifically authorized to “make informal disposition of any adjudicatory proceeding ... by default.” M.G.L. c. 30A, § 10(2). Pursuant to 801 CMR 1.01(7)(a), a party may request to the Presiding Officer by motion to “issue any order or take any action not inconsistent with [the] law or 801 CMR 1.00.” (For the definition of relevant terms, see M.G.L. c. 30A, § 1(2) (defining “agency”) and M.G.L. c. 30A, § 1(3) (defining a “party” to an adjudicatory proceeding)). Thus, the Commission is empowered to enter a Default Judgment and issue a Final Decision and Order in this matter.

In University Hosp., 396 Mass. at 539, the Supreme Judicial Court ruled that the default process established by an agency must satisfy the requirements of due process. A default process would be upheld where it afforded reasonable procedural safeguards for notice of consequences of failure to answer, it afforded the opportunity to object, and judicial review of the entire proceeding was available. Id. In the case before the Commission, the OTSC and the Motion

(both sent by UPS tracking) provided the Respondent with notice of the consequences of failing to appear or defend in this matter, as well as an opportunity to object. In addition, pursuant to M.G.L. c. 30A, § 14, judicial review of the entire proceeding is available to the Respondent. Therefore, the default process established by the Commission is both legal and proper.

By reason of the Respondent's default, and upon consideration of the Division's Motion, the Commission should grant the Motion. See Productora, 376 Mass. at 833-35; University Hosp., 396 Mass. at 539. The Commission should find that the allegations in the OTSC and the violations of the statutes and regulations stated therein are deemed admitted and established. The Respondent was afforded an opportunity for a full and fair hearing as required by M.G.L. c. 30A, §§ 10 and 11(1) and 801 CMR 1.01(4)(c).

Conclusion

The Division's Motion for Default and Final Decision should be granted for the reasons stated above. The Hearing Officer recommends that the Commission make final this Initial Decision and its allegations of misconduct against the Respondent and proceed to determine what discipline is appropriate. In accordance with the provisions of 555 CMR 1.10(4)(e)(2)(b), each of the parties has thirty (30) days to file written objections to the Initial Decision with the Commission.

SO ORDERED.

PEACE OFFICER STANDARDS AND TRAINING COMMISSION
Presiding Officer



Hon. Charles J. Hely (Ret.)
Hearing Officer

Dated: July 7, 2023

Notice to: Darren Senecal, Respondent
Timothy D. Hartnett, Esq., Commission Enforcement Counsel
Mount Wachusett Community College Police Department
Collective Bargaining Unit
Worcester County District Attorney's Office