



Massachusetts POST Commission

84 State Street, 2nd Floor, Boston, MA 02109

In the Matter of)
Jacob John Green) Case No. ED23-005-C
(MPTC User ID: 9998-3866)) Certification No. GRE-R2022-318887

Determination of the Executive Director

(Review of Division of Police Certification Decision Pursuant to 555 CMR 7.10(1))

The above-captioned matter comes before the Executive Director of the Massachusetts Peace Officer Standards and Training Commission (“Commission”), through a request for review regarding the recertification of Jacob Green (“Green”). On December 18, 2022, the Commission’s Division of Police Certification (“Division”) notified Green that it declined to recertify him. Green has requested review by the Executive Director of that decision.

Factual Findings

After reviewing Green’s application for recertification as a law enforcement officer and having conducted a careful review of the evidence submitted to me in connection with this matter, I hereby find the following:

1. Green was employed by the Transit Police Department of the Massachusetts Bay Transportation Authority (“Department”) from the beginning of his career as a law enforcement officer in 1999 until September 2, 2022.
2. On or about June 17, 2022, the Department submitted, in Green’s name, an application for recertification. In conjunction with that application, the Department submitted a report not attesting to Green’s good moral character and fitness for employment as a law enforcement officer. The Department’s non-attestation stated, in full, as follows:

On April 11, 2021 the Department alleges Officer Jacob Green, while off duty, did committ [sic] an assault by means of a firearm upon a citizen during a traffic dispute. Officer Jacob Green then filed a false police report to cover his criminal act. Additionally, Officer Jacob Green did conspire with a fellow officer to continue to thwart investigators from discovering the truth. Furthermore, investigators from the Department seized the personal cellular telephone of Officer Jacob Green pursuant to a Suffolk Superior court authorized search warrant. The analysis of said phone reveals Officer Jacob Green deleted/destroyed potential evidence contained within

his phone that investigators believe would have shed light on his criminal conduct relative to the aforementioned assault.

3. The sole basis for the Department's non-attestation of Green's application for recertification was the April 2021 incident described herein ("April 2021 incident").
4. The Department did not provide a copy of its report to either Green himself or to Green's collective bargaining unit, in contravention of 555 CMR 7.05(2)(c). Green only learned that the Department had not attested to his good moral character for the first time on or about March 3, 2023, after the Commission publicly posted its list of not certified officers.
5. In August 2022 the Department planned to hold a hearing to determine whether just cause existed to discipline Green, up to and including his termination. Green resigned from the Department prior to the hearing with an effective date of September 2, 2022.
6. After reviewing all of the evidence submitted by the Department, and evidence obtained by the Commission in connection with my review of this case, I find that the most thorough and objective recitation of the facts of the April 2021 incident is that set forth by former Special Assistant District Attorney ("ADA") Glenn Cunha, who issued a public report summarizing his investigation into the incident in January 2023.¹
7. According to Special ADA Cunha's report, after a traffic dispute between Green and the operator of another motor vehicle, and while stopped at a red light, Green used his cell phone to take a photo of the registration plate of the other vehicle which was stopped directly in front of him. The operator of that vehicle, upon seeing Green take that photo, exited his vehicle and angrily approached Green's vehicle on the driver's side. Green unholstered his service weapon but kept it on his lap. Green did not identify himself as a police officer, and he was not readily identifiable as such, as he was operating his personal vehicle and his uniform was covered by a sweatshirt. Seeing the firearm on Green's lap, the other driver then returned to his vehicle, called 911, and was subsequently pulled over by another Department police officer. At that time, Green, who had by then removed his sweatshirt and was now in full uniform, appeared and issued the driver a civil citation for a moving violation. The citation was later dismissed.
8. Immediately after the incident, Green called his patrol supervisor to report what had just occurred. Green then authored a report of the incident. Later that evening and the following day, supervisors instructed Green to revise his report to address several questions that, in those supervisors' view, Green's initial report had not adequately addressed. It is not clear when the final version of Green's report was completed. In any event, Special ADA Cunha's report found that "Green later amended his report to answer questions posed by a supervisor, but the substance of his report of the encounter did not change," and "[Green's] version of the facts in this [amended] report were consistent with his initial report."
9. Having independently reviewed the underlying evidence in connection with my review, I credit Special ADA Cunha's findings in this regard.²

¹ <https://www.suffolkdistrictattorney.com/press-releases/items/2023/1/12/letter-from-special-prosecutor-glenn-cunha-to-da-hayden-re-former-mbta-police-officer-jacob-green>.

² In his report, Special ADA Cunha concludes that no criminal charges were warranted.

10. As part of its investigation into the April 2021 incident, the Department obtained evidence that Green and another Department officer, Kevin Davis, communicated by phone and text message in the hours and days following the April 2021 incident. Davis was at the scene of the April 2021 incident, observing the interaction described above from a vehicle directly behind Green's, although Davis did not intervene. Text messages between Green and Davis (including group messages that included both officers along with others) appear to have been deleted from Green's phone. However, in his interview with me, Green explained that he regularly deletes *all* text messages from his cell phone (except for messages from immediate family members). My independent examination of the cell phone extract from Green's cell phone is consistent with a large deletion of messages at some point before it was seized pursuant to a search warrant in July 2021.
11. In April 2023,³ the Division forwarded notice to Green that it had denied his application for recertification, stating in relevant part that the following requirements had not been satisfied:
 - a. Must possess CPR/First Aid Certification;
 - b. Must complete an oral interview and questionnaire;
 - c. Must complete in-service training requirements for FY2022;
 - d. The Department had declined to attest that he was of good moral character and fit for employment in law enforcement.
12. On July 17, 2023, Green requested review by the Executive Director of the Division's decision.
13. In connection with my review of the initial decision, Commission staff supporting my review and I made several requests for relevant documents from the Department. Ultimately, on December 22, 2023, the Commission issued a subpoena to the Department, compelling it to produce all records concerning its investigation of the April 2021 incident. The Department provided numerous additional files in response to that subpoena. I have no reason to doubt that the Department fully complied with its obligations under the subpoena.
14. I find that several aspects of the Department's investigation were not consistent with the Commission's regulations at 555 CMR 1.01. On November 2, 2023, the Department informed me that it had not, as of that date, completed any formal investigative report into the April 2021 incident. As grounds for not doing so, the Department cited the fact that the case had previously been pending review by the Suffolk District Attorney's Office for potential criminal charges against Green. However, by November 2023, the Suffolk DA's review of potential criminal charges had ended many months earlier, with the public release of Special ADA Cunha's report on January 9, 2023. The Department subsequently and belatedly completed an investigative report which it submitted to the Commission on November 21, 2023. I find that this November 2023 report was the first time the Department had created a document formally sustaining any charges against Green in connection with

³ The Division rendered this decision in December 2022 and sent notice via email to the Department and Green's Department email address on December 18, 2022. However, because Green was no longer employed by the Department as of that date, he never received that email.

the April 2021 incident.

15. On December 15, 2023, I met with Green and his counsel. In the interview, Green recited a version of the April 2021 incident that was largely consistent with that publicly reported by Special ADA Cunha. As to the allegations concerning his deletion of text messages between himself and Davis, Green stated that he routinely deletes all text messages (except for those between his immediate family members) from his phone, and thus he did not delete any messages with the intent to conceal any wrongdoing related to the April 2021 incident. Green acknowledged that he may have shared a “handful” of texts with Davis during the time period from April 11, 2021 through April 13, 2021; however, Green could not recall the subject matter of the messages except for one: In one of the messages, Davis informed Green of his (Davis’s) belief that the Superintendent of the Department was supportive of Green’s position with regard to the incident. Green thought that the message was strange. Green was able to retrieve, from another person, several deleted text messages from a group that included both him and Davis; the messages were irrelevant.
16. As part of my meeting with Green, I conducted an oral interview and reviewed the questionnaire that the Commission requires of all officers who are seeking recertification. I also reviewed Green’s entire disciplinary history.

Determination

The Commission’s enabling statute sets forth minimum certification standards, which include “being of good moral character and fit for employment in law enforcement, as determined by the [C]ommission.” M.G.L. c. 6E, § 4(f)(1)(viii), (ix). The Commission’s regulations, 555 CMR 7.05(4), describe the standards for “Determination of Good Character and Fitness for Employment.” That regulation states, in part, that

In rendering a determination regarding an officer’s good character and fitness for employment, unless there have been allegations that an officer has engaged in multiple instances of similar or related misconduct or protocols adopted by the [C]ommission provide otherwise, neither the employing agency nor the [D]ivision of [C]ertification shall consider an allegation of a particular instance of misconduct where:

[. . . .]

(d) The alleged misconduct did not result in either a disciplinary proceeding or court action, and the employing agency has not offered a reasonable explanation as to why no such proceeding or action was commenced; or

(e) The allegation is not specifically and credibly supported.

555 CMR 7.05(4)(e). Here, the sole basis for the Department’s non-attestation of Green’s moral character and fitness for employment is the April 2021 incident described at length above. The undisputed facts of that incident certainly do not reflect ideal judgment on Green’s part, and I share Special ADA Cunha’s view that Green’s actions “fall below the expectations we have for law enforcement officers.” Nevertheless, I do not consider this apparently isolated incident for two reasons.

First, the Department did not author any investigative report sustaining charges against Green until the absence of any such report was pointed out to the Department during my review, in November 2023. The Department claimed it had initially deferred preparing a report while the Suffolk District Attorney's Office was reviewing the April 2021 incident for possible criminal charges. That may have been a plausible basis to keep the investigation open while the DA's review was ongoing, but that review unquestionably ended by January 9, 2023, when the DA's office publicly announced its decision not to prosecute Green. The Department has not offered any explanation for why it did not proceed with finalizing its investigation at least as of January 2023. Green's resignation in the fall of 2022 does not change the analysis: the Commission's regulations require a law enforcement agency to complete and submit an investigative report even if the officer resigns while the investigation is ongoing or prior to discipline being imposed. 555 CMR 1.01(5). Thus, pursuant to 555 CMR 7.05(4)(d), I elect not to consider the Department's findings, because the "alleged misconduct did not result in [] a disciplinary proceeding . . . , and the employing agency has not offered a reasonable explanation as to why no such proceeding [] was commenced."

Second, and upon review of the merits of the Department's allegations, I do not credit the Department's finding that Green committed the criminal offense of Assault with a Dangerous Weapon. In concluding that such a charge could likely not be proven at a criminal trial,⁴ Special ADA Cunha's report clearly explains that Green had a viable defense to this charge, *i.e.*, "a reasonable concern for his safety" when the driver of the other vehicle got out of his vehicle and angrily approached Green's vehicle. Special ADA Cunha noted that, although Green unholstered his weapon, he did not raise his weapon or aim it at the driver; and Green was unable to escape the encounter because his vehicle was blocked by the sidewalk and other traffic. Although the Department had the prerogative to independently investigate these allegations and reach a different conclusion than the District Attorney as to whether Green violated the law, the Department's reasons for reaching a different conclusion here do not adequately consider these factors. Instead, the Department relies largely on speculation as to what Green motives may have been.⁵ I therefore find that the Department's conclusion in this case is "not specifically and credibly supported" by the evidence it relied on and submitted for my review. *See* 7.05(4)(e).

The evidence submitted by the Department also does not specifically or credibly support the Department's conclusions that Green "deleted/destroyed potential evidence contained within his phone," or that he "filed a false police report to cover his criminal act." As Green stated in his interview, and as the documentary evidence shows, Green both orally reported to his supervisors and filed a police report immediately after the incident in which he truthfully related key facts

⁴ While Green's petition characterizes Special ADA Cunha's public report as an announcement that Green had "committed no crime" (emphasis in original), the report is not fairly read as an exoneration of Green's actions. The report is carefully limited to discussing why, in its author's opinion, "the evidence is insufficient to sustain the Commonwealth's burden of proof on any state crimes."

⁵ For example, the Department suggests, without any basis in evidence, that Green intentionally caused the traffic dispute by slowing his vehicle down in order to "bait" the other driver. And, the Department faults Green for not attempting to back his vehicle away, even though (as Special ADA Cunha recognized) doing so would have been impossible under the circumstances.

about the incident—including, most notably, the fact that he had unholstered his weapon.⁶ Green subsequently incorporated changes to his report in response to questions posed to him by his supervisors. Although the Department identifies several differences between the original and amended versions of Green’s report, it fails to adequately explain why those differences are evidence of a *deliberate intent* to provide false information. As to the apparently deleted text messages between Green and Davis, I credit Green’s statements that he routinely purged his cell phone of all text messages except those from his immediate family. Additionally, the evidence obtained by the Department via search warrant fails to show that Green selectively deleted messages from Davis.

To be sure, the Department may well have had good reason to criticize certain aspects of Green’s conduct during the incident. For example, the Department questions Green’s decision to take the photograph of the other vehicle’s registration plate in the first place, and it states that Green should have identified himself as a police officer immediately when the encounter became confrontational. The Department also heavily criticizes the quality of Green’s initial written report of the incident. Consistent with these criticisms, Special ADA Cunha stated that Green’s actions “fall below the expectations we have for law enforcement officers.” However, for the reasons discussed above, I find that the most serious allegations leveled against Green—namely, that Green committed a criminal assault with a dangerous weapon, that he filed a false police report, and that he deliberately destroyed evidence of his putative criminal conduct, are “not specifically [or] credibly supported” by the evidence of record. 555 CMR 7.05(4)(e). I therefore do not consider them in weighing Green’s moral character and fitness to serve as a law enforcement officer.

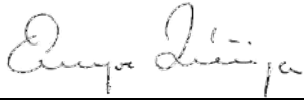
Based on my review of Green’s petition and all the information before me, I have determined that Green possesses the requisite good moral character and fitness for employment in law enforcement at this time. Therefore, I hereby **remand** this matter to the Division of Police Certification with an instruction to issue Green a full recertification as soon as the Division verifies compliance with the CPR/First Aid Certification (item 11.a described above) and the in-service training requirements for FY2022 and FY2023 (item 11.c described above). This decision serves as confirmation that Green has complied with the oral interview and questionnaire (item 11.b described above).

As per 555 CMR 7.10(3) Green is hereby deemed to have been certified for the period between the initial denial of certification and this decision.

Green must remain in compliance with the requirements of Chapter 6E of the Massachusetts General Laws and all rules and regulations promulgated by the Commission for the duration of Green’s employment as a law enforcement officer.

⁶ The Department itself concedes that, minutes after the incident, Green contacted his Officer-in-Charge by telephone and reported that he had unholstered his weapon. The Department faults both officers only for communicating via cell phone instead of a recorded, official landline telephone. Green informed me that it was not uncommon for officers and supervisors to communicate via cell phone given the nature of their duties away from the office.

The Commission reserves the ability to revisit the matter of Green's certification if it receives new information that paints a materially different picture of the facts, in accordance with 555 CMR 7.09.



Enrique Zuniga
Executive Director

March 20, 2024

Date