

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

In the Matter of)	Case No. PI-2023-06-15-004
)	
Robert Otis)	

FINAL DECISION

In accordance with 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 an Initial Decision and Order, and Robert Otis (“Respondent”) 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 is hereby **granted**. See 555 CMR 1.10(4). The Respondent was afforded the opportunity for a full and fair hearing. See M.G.L. c. 30A, § 10 (providing that, “[i]n conducting adjudicatory proceedings,” “agencies shall afford all parties an opportunity for full and fair hearing,” and “[u]nless otherwise provided by any law, agencies may” “place on any party the responsibility of requesting a hearing if the agency notifies [the party] in writing of [the party’s] right to a hearing and of [the party’s] responsibility to request the hearing” and “make informal disposition of any adjudicatory proceeding by” “default”), § 13 (providing that, “[e]xcept as otherwise provided in this section, no agency shall revoke or refuse to renew any license unless it has first afforded the licensee an opportunity for hearing in conformity with [§§ 10, 11, and 12],” but “[t]his section shall not apply” “[w]here the agency is required by any law to revoke, suspend or refuse to renew a license, as the case may be, without exercising any discretion in the matter, on the basis of a court conviction or judgment” or “[w]here the revocation, suspension or refusal to renew is based solely upon failure of the licensee to file timely reports, schedules, or applications . . .”), incorporated by reference in M.G.L. c. 6E, § 10(f) and 555 CMR 1.10(4).

The Commission finds, by clear and convincing evidence, that Respondent is not fit for duty as an officer, is dangerous to the public, has a pattern of unprofessional police conduct that the Commission believes may escalate, and has repeated sustained internal affairs complaints for the same or different offenses. See M.G.L. c. 6E, §§ 10(a)(xvi), 10(b)(iii), and 10(b)(v). Thus, 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. M.G.L. c. 6E, §§ 10(g), 13(b). This is the final decision of the Commission. M.G.L. c. 30A, § 11(8); 555 CMR 1.10(4)(e).

By vote of the Commission on August 15, 2024.

In accordance with M.G.L. c. 30A, § 14 and M.G.L. c. 6E, § 10(f), the Respondent may commence an appeal to the Superior Court within thirty (30) days to the extent allowed by law. After initiating proceedings for judicial review in Superior Court, the Respondent, or the Respondent's 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 manner prescribed by Mass. R. Civ. P. 4(d).



Hon. Margaret R. Hinkle (Ret.), Chair

Notice to: Robert Otis, Respondent
Timothy D. Hartnett, Esq., Commission Enforcement Counsel
Brockton Police Department, Appointing Agency
Collective Bargaining Unit
Plymouth County District Attorney's Office

Ex. A. In particular, the Respondent was notified that if an answer to the allegations in the OTSC is not filed, the Commission may enter a Final Decision and Order that assumes the truth of the allegations in the OTSC and that the Commission may take action against the Respondent's certification, including granting, in full, the action contemplated in the OTSC.

Ex. A.

3. The Motion was mailed by the Division to the Respondent by USPS Priority Mail on May 6, 2024, to the same last known address. Exs. C, D. The undersigned takes administrative notice that the OTSC was attached as an exhibit to the Motion.

4. By operation of law, the Commission may presume that the Respondent received both the OTSC and the Motion, as discussed below. The Respondent failed to respond to either the OTSC or the Motion.

III. Allegations Contained in the OTSC

1. On June 15, 2023, the Commission directed the Division to open a preliminary inquiry to investigate allegations of misconduct against the Respondent. M.G.L. c. 6E, §§ 8(c), 10(a)-(b); [REDACTED]

2. On July 1, 2021, the Respondent was automatically certified as a police officer pursuant to St. 2020, c. 253, § 102, an Act Relative to Justice, Equity and Accountability in Law Enforcement in the Commonwealth.

3. The Respondent's certification expired on June 30, 2023.

4. On March 26, 2022, during a motor vehicle stop, the Respondent, while on duty for the Brockton Police Department ("BPD"):

- a. failed to provide adequate support to an individual he suspected was intoxicated while forcibly removing that individual from their vehicle and, as a result, the individual suffered a head injury;
- b. failed to request medical attention for the same injured individual;

- c. allowed the same individual to drive their vehicle home despite their head injury and suspected intoxication; and
 - d. during a phone call to his supervisor to obtain advice on how to proceed during this incident, knowingly omitted the fact that he suspected the individual was intoxicated.
- 5. On August 30, 2022, after conducting an internal investigation into the Respondent's actions described in paragraph 4 above, the BPD sustained allegations that the Respondent engaged in neglect of duty and conduct unbecoming an officer, and that he violated the BPD's use of force and documentation policies.
- 6. On September 13, 2022, the Commission received a copy of the BPD's Internal Affairs Report for the investigation and findings described in paragraph 5 above.
- 7. On July 4, 2022, the Respondent:
 - a. engaged in a motor vehicle pursuit which BPD deemed "dangerous" and "unjustified" while failing to request backup, and
 - b. failed to accurately report his pursuit in contravention of BPD policy.
- 8. On July 5, 2022, the Respondent:
 - a. threatened to call the Massachusetts Department of Children and Families in order to obtain information from an individual;
 - b. conducted an illegal search of an individual's freezer and seized a firearm found inside the freezer; and
 - c. handled the firearm in an unsafe manner after taking possession of it while effecting an arrest.
- 9. On July 9, 2022, the Respondent:
 - a. seized a firearm based even after being told that the individual possessed a valid license to carry firearms, and in contravention of a direct order from his supervisor

not to seize the firearm;

- b. in further contravention of his supervisor's direct order, attempted to charge that same individual with a firearm-related offense; and
- c. repeatedly left the seized firearm unsecured and unattended.

10. On December 8, 2022, after conducting an internal investigation into the Respondent's actions described in paragraphs 7 through 9 above, the BPD sustained allegations that the Respondent engaged in conduct unbecoming an officer and insubordination, untruthfulness, violated the BPD's policy on pursuits, improperly seized a firearm, and violated his "general duties" by mishandling a firearm.

11. On December 16, 2022, the Commission received a copy of the BPD's Internal Affairs Report for the investigation and findings described in paragraph 10 above.

12. On May 9, 2023, the Respondent resigned from his position at the BPD.

IV. Exhibits

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

Exhibit A: OTSC with a certificate of service, dated March 26, 2024

Exhibit B: OTSC USPS Priority Mail tracking, dated March 28, 2024.

Exhibit C: Motion for Default and Final Decision, dated May 6, 2024.

Exhibit D: Motion for Default USPS Priority Mail tracking, dated May 10, 2024.

The undersigned takes administrative notice of all papers filed in this case, as well as Chapter 6E and Commission regulations. See M.G.L. c. 30A, § 11(5).

V. Legal Basis for Commission Disciplinary Action

1. 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]; [and]
- (24) conduct adjudicatory proceedings in accordance with [C]hapter 30A;

2. Pursuant to M.G.L. c. 6E, § 10(a)(xvi), “[t]he [C]ommission shall, after a hearing, suspend or revoke an officer’s certification if the [C]ommission finds by clear and convincing evidence that . . . the officer is not fit for duty as an officer and the officer is dangerous to the public, as determined by the [C]ommission.”

3. 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.”

4. Pursuant to M.G.L. c. 6E, § 10(b)(v), “[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 repeated sustained internal affairs complaints, for the same or different offenses.”

5. Pursuant to M.G.L. c. 6E, § 10(g), the [C]ommission shall publish any revocation order and findings and shall provide all revocation information to the National Decertification Index (“NDI”).

6. Pursuant to M.G.L. c. 6E, § 10(h), the [C]ommission may institute a disciplinary hearing after an officer's appointing agency has issued a final disposition on the alleged misconduct or one year has elapsed since the incident was reported to the [C]ommission.

VI. Notice

The Respondent was notified at his last known address by the OTSC 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. In addition, the notice informed him that the Commission may take particular action against his certification, including granting in full the relief contemplated in the OTSC. These advisories were sufficient to place him on notice of the consequences of any default. See *Lawless v. Bd. of Registration in Pharmacy*, 466 Mass. 1010, 1010 n.1, 1011 (2013) (concluding that pharmacist had “ample notice,” where he was informed that “failure to appear at any hearing would result in entry of default and that, in the event of default, the board could enter a final decision accepting as true the allegations contained in the show cause order”); *Univ. Hosp., Inc. v. Massachusetts Comm’n Against Discrimination*, 396 Mass. 533, 539 (1986) (holding that default provision did not violate due process, as it “afford[ed] the respondent reasonable procedural safeguards for notice and opportunity to be heard”). Despite being afforded the opportunity to do so, the Respondent has failed to file an answer, request an adjudicatory hearing, or otherwise respond.

On May 6, 2024, the Division moved for a default judgment and final decision and served the Motion, with Exhibits A and B attached, by USPS Priority Mail with tracking information to the Respondent’s last known address. Ex. D.

The Commission provided sufficient notice by delivering the OTSC and the Motion using USPS Priority Mail. Massachusetts law presumes that the addressee receives properly deposited mail. See *Espinal’s Case*, 98 Mass. App. Ct. 152, 152-53, 156 (2020) (citing *Eveland v. Lawson*, 240 Mass. 99, 103 (1921) (“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.”)); *Commonwealth v. Crosscup*, 369 Mass. 228, 239 (1975) (“Proper mailing of a letter is ‘prima facie evidence’ in civil cases of its receipt by the addressee.” (citations omitted)). Further, nothing in Chapter 6E required the Division to take any additional steps or prohibits the Division from relying on the certification that it mailed the Motion via USPS Priority Mail delivery. See *Espinal’s Case*, 98 Mass. App.

Ct. at 157 (“[O]n other occasions when the Legislature intended to impose a requirement for notice by certified mail, return receipt requested, it has done so explicitly.”). The undersigned may presume that the Respondent received the Motion that was sent through USPS Priority Mail at his last known address.

VII. Discussion

Pursuant to 801 CMR 1.01(7)(a), a party may request through a motion that a Hearing Officer “issue any order or take any action not inconsistent with [the] law or 801 CMR 1.00.” One such action is recommending the entry of a final judgment of default where a respondent has failed to appear. Under M.G.L. c. 30A, § 10(2), an agency is specifically authorized to “make informal disposition of any adjudicatory proceeding . . . by default.” Lawless, 466 Mass. at 1011-12 (affirming that agency “ha[d] authority, in an appropriate circumstance, to dispose of an adjudicatory proceeding by default,” citing M.G.L. c. 30A, § 10; and concluding that agency’s decision to do so was not shown to be improper, where the party failed to appear after the first day of hearing). That step is warranted here. The Commission has afforded the Respondent an opportunity for a full and fair hearing as required by M.G.L. c. 30A, §§ 10, 11(1) and 801 CMR 1.01(4)(c).

In University Hospital, the Supreme Judicial Court rejected the notion that due process standards were violated by an agency rule that provided sanctions for a party’s default upon receiving interrogatories. 396 Mass. at 538-39. The court found the provisions of the agency rule “afford . . . reasonable procedural safeguards for notice and an opportunity to be heard,” noting that a respondent is given clear notice of the consequences, and has opportunities to object, to obtain an extension of time, to petition for a default to be vacated, and to seek judicial review of the entire proceedings. In the case before the Commission, the OTSC and the Motion (both sent by USPS with tracking) provided the Respondent with notice of the consequences of a failure to appear or defend in this matter, as well as an opportunity to object. Exs. A, D. The

Respondent could have sought more time to respond under 801 CMR 1.01(4)(e), (7)(a).

Therefore, the entry of a default judgment by the Commission is both legal and proper.

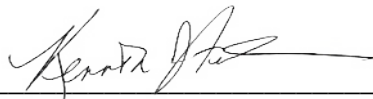
By reason of the Respondent's default, and upon consideration of the Division's Motion, the undersigned recommends that the Commission grant the Motion. See Lawless, 466 Mass. At 1010-12 & n.1; Univ. Hosp., 396 Mass. at 538-39; Productora e Importadora de Papel, S.A. de C.V. v. Fleming, 376 Mass. 826, 833-35 (1978) (recognizing that a default establishes the truth of factual allegations). In addition, the undersigned recommends that the Commission find that the allegations in the OTSC and the violations of the statutes and regulations stated therein are deemed admitted and established. See Lawless, 466 Mass. at 1010-12 & n.1; Univ. Hosp., 396 Mass. at 534, 538-39; Productora e Importadora de Papel, 376 Mass. at 833-35.

VIII. Conclusion

The Division's Motion should be granted for the reasons stated above. The undersigned recommends that the Commission find the allegations to be supported, make this Initial Decision final, 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 30 days to file written objections to the Initial Decision with the Commission.

SO ORDERED.

PEACE OFFICER STANDARDS AND TRAINING COMMISSION



Hon. Kenneth J. Fishman (Ret.)
Hearing Officer

Dated: July 2, 2024

Notice to: Robert Otis, Respondent
Timothy D. Hartnett, Esq., Enforcement Counsel

Brockton Police Department, Agency
Collective Bargaining Unit