

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

IN THE MATTER OF)
RANDY CANELA)

Case No. 2024-036

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 an Initial Decision and Order, and Randy Canela (“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 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 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 the Respondent has a pattern of unprofessional police conduct that the Commission believes may escalate. Thus, the Respondent’s certification is hereby revoked. M.G.L. c. 6E, § 10(b)(iii) (“The [C]ommission may . . . 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.”)

The Executive Director shall take the necessary steps to publish the Respondent’s name in the National Decertification Index. See 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 November 21, 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).

Margaret R. Hinkle

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

Notice to: Randy Canela, Respondent
Tara L. Chisholm, Esq., Commission Enforcement Counsel
Salem Police Department, Agency
Essex County District Attorney's Office
Collective Bargaining Unit

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

IN THE MATTER OF
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Case No. 2024-036

INITIAL DECISION

I. 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). Randy Canela (“Respondent”) did not answer, appear, or defend the allegations of misconduct against him in the Order to Show Cause (“OTSC”). Nor did he respond to mailings delivered to him by the Division of Police Standards (“Division”). For the reasons stated below, I recommend that the Commission grant the Division’s Motion for Default and Final Decision (“Motion”), adopt this Initial Decision as its Final Decision and determine what discipline should be imposed against the Respondent.

II. Procedural History

1. The Division served the Respondent with an OTSC by USPS Priority Mail on August 23, 2024, addressed to the Respondent’s last known home address. Attachment 1; see Att. 3 n.1.

The record indicates that the OTSC was delivered on August 27, 2024. Att. 2.

2. The OTSC contained the allegations against the Respondent and notification of the obligation to file an answer or otherwise respond to the allegations within 21 days. Att. 1. The OTSC stated that, if a responsive and timely answer was not filed, the Commission may act.

Att. 1. 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.

Att. 1.

3. The Motion was mailed by the Division to the Respondent by USPS Priority Mail on September 27, 2024, to the same last known address. Atts. 3 n.1 and 4. I take 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 July 1, 2021, the Respondent was automatically certified as a police officer in Massachusetts pursuant to St. 2020, c. 253, § 102, an Act Relative to Justice, Equity and Accountability in Law Enforcement in the Commonwealth. Throughout the time of the below allegations, the Respondent was a law enforcement officer employed by the Salem Police Department ("Salem PD").

2. The Respondent was employed as a law enforcement officer at the Salem PD from January 30, 2017, until his resignation on January 25, 2022. At the time of his resignation, the Respondent was the subject of an internal investigation that later resulted in sustained findings and discipline.

3. On or about December 19, 2019, the Respondent received a two-day suspension (one-day suspension to be served and one-day to be held in abeyance for a period of one year) for sustained findings that he violated the Salem PD's Rules and Regulations relating to Departmental Property and Equipment, Transporting Citizens, Prohibited Conduct, and Incurring

Department Liability. The Respondent, along with another officer, picked up a female acquaintance in his police cruiser from a local bar in or around May 2018, while on duty, and drove her home. The Respondent failed to obtain permission from a superior officer prior to picking her up and failed to report his mileage to dispatch during transport.

4. On or about October 6, 2021, through October 21, 2021, the Respondent engaged in Facetime phone calls and texting of a sexual nature with a [REDACTED] juvenile female, whom he had met while on duty at least two years prior at her home when she was [REDACTED]

[REDACTED] The October 2021 communications revealed the following:

- The Respondent was often on duty during his communications with the juvenile.
- The Respondent had knowledge that [REDACTED]
[REDACTED]
- The Respondent provided money to her electronically through a phone application during the course of their communications.
- The Respondent had knowledge that [REDACTED]
[REDACTED]
- The Respondent had knowledge that [REDACTED]
[REDACTED]
- The Respondent discussed sexually explicit topics with her in some of their communications.
- The juvenile referred to the Respondent as “love” during one text exchange.
- The Respondent texted the juvenile [REDACTED]
[REDACTED] “I want your ass.”

- [REDACTED]
- [REDACTED]
- The Respondent texted the juvenile that she should delete records of their conversations, and the juvenile told him that she always does.

5. On or about January 27, 2022, the Salem PD issued its internal investigation report relating to the relationship between the Respondent and the above-described juvenile. Investigators sustained allegations that the Respondent's behavior constituted conduct unbecoming an officer.

6. Following the Respondent's January 25, 2022, resignation, Salem PD Chief Lucas Miller recommended that the Commission decertify the Respondent.

7. On March 21, 2024, the Commission directed the Division to open a preliminary inquiry to investigate the above-described allegations against the Respondent.

IV. Attachments

In ruling on this matter, I have considered the Motion filed by the Division and the following attachments:

Attachment 1: OTSC with a certificate of service, dated August 23, 2024.

Attachment 2: OTSC USPS Priority Mail tracking, indicating delivery on August 27, 2024.

Attachment 3: Motion for Default and Final Decision, dated September 27, 2024.

Attachment 4: Motion for Default USPS Priority Mail tracking, dated September 30, 2024.

I take 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 commission deems reasonable; . . .
- (23) restrict, suspend or revoke certifications issued under [chapter 6E];
- (24) conduct adjudicatory proceedings in accordance with chapter 30A; . . .

2. Pursuant to M.G.L. c. 6E, § 10(b)(iii), “[t]he [C]ommission may . . . 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.”

3. 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 (“NDI”).

4. 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 regarding the alleged misconduct.

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 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 [R]espondent reasonable procedural safeguards for notice and an 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 September 27, 2024, the Division moved for a default judgment and final decision and served the Motion, with the OTSC and OTSC tracking information attached as exhibits, by USPS Priority Mail with tracking information to the Respondent’s last known address as indicated by a CLEAR search conducted by the Division. Att. 3.

The Commission provided sufficient notice by delivering the OTSC and the Motion using USPS Priority Mail. Under Massachusetts case law, there is a presumption 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.”)); see also 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.”). Further, nothing in chapter 6E required the Division to take any additional steps. Nor is the Division prohibited 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 (stating that “on other occasions when the Legislature intended to impose a requirement for notice by certified mail, return receipt requested, it has done so explicitly”). I 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 Hosp., 396 Mass. at 538-39, 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. The court concluded that the provisions of the agency rule “afford . . . reasonable procedural safeguards for notice and an opportunity to be heard,” noting that respondent was given clear notice of the consequences, could obtain an extension of time, petition for a default to be vacated, and seek judicial review of the entire proceedings. Id. at 539. 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. Atts. 1 and 3. The Respondent could have sought more time to respond under 801 CMR 1.01(4)(e), (7)(a), and (7)(d). 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, I recommend 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, I recommend 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. I recommend that the Commission find the allegations to be supported, make this Initial Decision final, and determine the appropriate discipline. In accordance with the provisions of 555 CMR 1.10(4)(e)(2)(b), the officer has thirty days to file written objections to the Initial Decision with the Commission.

SO ORDERED.



Hon. Judith A. Cowin (Ret.)
Hearing Officer

Date: October 11, 2024

Notice: Randy Canela, Respondent
Tara L. Chisholm, Esq., Commission Enforcement Counsel
Salem Police Department, Agency
Essex County District Attorney's Office
Collective Bargaining Unit