



PEACE OFFICER STANDARDS & TRAINING COMMISSION

March 6, 2023

Via Electronic Mail

Carlos Garza
Abington Police Department
Acadis #6947-7387
Reference #: GAR-R2022-83095
[REDACTED]

Re: Petition for Executive Director Review – Case No. ED22-006-C

Dear Mr. Garza,

Pursuant to 555 CMR 7.10(1), I have reviewed the Peace Officer Standards and Training Commission's ("Commission") Division of Police Certification's decision declining to grant you full recertification and the related submissions.

The following is a summary of the relevant events and correspondence:

1. On August 23, 2022, the Division of Certification sent you a Notice of Denial of Recertification which stated, in relevant part:
 - a. You must complete an oral interview and the questionnaire....
 - b. Your agency has declined to attest that you are of good moral character and fit for employment in law enforcement.
2. **Oral Interview.**
 - a. Chief David Del Papa of the Abington Police Department ("Department") did not conduct the oral interview because you were on paid administrative leave at the time the Department's recertification packet was submitted to the POST Commission (before June 15, 2022).
 - b. On February 9, 2023, the Commission's Director of Police Certification, Steven Smith, conducted and completed an oral interview with you, in the presence of your attorney, Ernie Horn.
3. **Lack of Attestation of Good Moral Character and Fitness for Duty as a Law Enforcement Officer.**

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Chief Del Papa declined to attest to your good moral character and fitness for employment as a law enforcement officer. The instances of misconduct considered are described below:

- a. On February 2, 2022, after returning from Patrol, you engaged in an argument with supervisors, and while leaving the room you “shoulder checked” Sergeant Lynch on the way out.
 - i. You were cited with violations of the following Policies, Rules and Regulations:
 - i. Workplace Violence Police #2012-P04
 - ii. Oath and Code of Ethics Police #2008-P02B
 - iii. Conduct Unbecoming an Officer Rule 4.02
 - iv. Courtesy Rule 6.3
 - v. Insubordination Rule 7.01
 - vi. Policies and Procedures Compliance Rule 10.5
 - vii. Fighting/Quarreling Rule 10.11
- b. On July 26, 2022, the North Smithfield Police Department of Rhode Island, arrested you for “Domestic Violence” resulting in the suspension of [REDACTED]. You had admitted to slapping a can of water out of [REDACTED]’s hands. The case was dismissed and expunged.
- c. According to a summary report dated October 12, 2022 and an investigative report dated October 6, 2022 by L’Italien Investigative Services, there was a **sustained** finding that you violated the Department’s Rule 7.1 regarding insubordination. The investigation concluded that by attending the Sig Sauer P320 Armorer’s training course on August 19, 2022 while on paid administrative leave, you violated Chief Del Papa’s written order which stated, in part, “While on administrative leave, you may not come to the workplace or perform any work related to your employment with this Department.”
- d. According to an investigative report dated October 6, 2022 by L’Italien Investigative Services, the following allegations were **sustained**:
 - i. that you violated the Department’s Rule 6.9 for “truthfulness, which states, in part, “Abington Police Officers shall speak the truth at all times;”
 - ii. that you violated the Department’s Residency Rule 10.1, which cites M.G.L. c. 31, § 58, pertaining to municipal police officers and firefighters (qualifications) and stating in part, “Any person who receives an appointment to the police force or fire force of a city or town shall within nine months after his appointment establish his residence within such city or town or at any other place in the commonwealth that is within ten miles of the perimeter of such city or town;”
 - iii. that you violated the Department’s Rule 10.2 regarding “Home Address and Telephone,” which states in part, “Abington Police Officers shall report any change of telephone number or home address to the Chief within twenty-four hours of such change.”

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These allegations stem from your representation and assertion that your “primary residence” is at an address in [REDACTED], when the investigation concluded that your primary residence appeared to be at an address in [REDACTED]. The investigative report states that “[a]s of this writing, Officer Garza has not informed the Chief of Police of this address change.”

Determination

1. Completion of an Oral Interview

The record shows that on February 9, 2023, an oral interview was conducted by the Commission’s Director of Police Certification, Steven Smith, thus satisfying this requirement.

2. Good Moral Character and Fitness for Employment as a Law Enforcement Officer

Although you were instructed to refrain from attending the workplace or performing any work related to your employment and you violated that instruction by attending the Sig Sauer training, you did receive an e-mail confirmation from Sig Sauer and did not receive any communication from any party to contradict this registration.

For the shoulder-checking incident on February 2, 2022, you were suspended without pay for 3 days from May 10 to May 12, 2022 due to the violations described above. Because you have complied with the disciplinary action imposed, I have not factored this incident into my evaluation, pursuant to 555 CMR 7.05(4), which states in relevant part,

unless there have been allegations that an officer has engaged in multiple instances of similar or related misconduct or protocols adopted by the commission provide otherwise, neither the employing agency nor the division of certification shall consider an allegation of a particular instance of misconduct [in rendering a determination regarding an officer’s good character and fitness for employment] where... (c) [t]he officer has complied or is in the process of complying, with any disciplinary action...in relation to the alleged misconduct, and the officer has not engaged in any similar conduct since the discipline or decision.

The July 26, 2022 domestic violence incident resulted in a suspension of your [REDACTED] and the case was ultimately dismissed and expunged.

According to a summary report dated October 12, 2022 and an investigative report dated October 6, 2022 by L’Italien Investigative Services, the allegations that you violated the Department’s Rule 4.01 for “conduct unbecoming an officer” and the Department’s Oath and Code of Ethics Policy # 2008 – P02B were unsustainable. This investigation was initiated after allegations were made that at a weekly “law enforcement class” at a Brazilian Jiu Jitsu facility, you threatened to injure an instructor and unnecessarily injured some officers during the training, resulting in your ban from the class. Although the investigative report finds that you have violated the

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Department's residency rules, this violation does not, in my opinion impugn your moral character and fitness for duty as a law enforcement officer.

Given that the events relative to the alleged misconduct at the Brazilian Jiu Jitsu class are unsubstantiated, I have not included them as part of my determination, pursuant to 555 CMR 7.05(4)(e).

Taken together these events do not, in my opinion, impugn your moral character and fitness for duty as a law enforcement officer. I further find that taken collectively, the sustained allegations above do not constitute multiple instances of similar or related misconduct.

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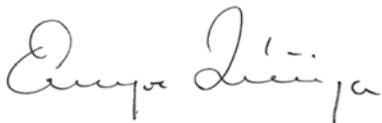
For the reasons stated above, I have decided to issue a determination in your favor.

Based on my review of your petition, **I hereby instruct the Division of Certification to issue you a Conditional Certification.** The certification will be conditional on you completing all required in-service training. You are also hereby directed to always comply with the department policies and rules.

Please note that you must remain in compliance with the requirements of Chapter 6E of the Massachusetts General Laws and all regulations promulgated by the Commission for the duration of your employment as a law enforcement officer.

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

Sincerely,



Enrique A. Zuniga
Executive Director
Peace Officer Standards and Training Commission

cc: David Del Papa, Chief, Abington Police Department, ddelpapa@abingtonpolice.org
Ernie Horn, Horn & O'Loughlin, erniehorn@hornlaw.org