

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

In the Matter of) Case No. 23-007-S
) (PI-2023-03-16-001)
Justin Chappell)

FINAL DECISION

Pursuant to 555 CMR 1.10(1), a Hearing Officer was assigned to 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 Justin Chappell (“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**. The Commission finds that the Respondent used excessive force on two incidents, in violation of M.G.L. c. 6E, § 14; had repeated use of excessive force that constitutes a pattern of unprofessional police conduct that may escalate; and had repeated sustained internal affairs complaints for the same or different offenses. M.G.L. c. 6E, §§ 10(a)(x), 10(b)(iii), 10(b)(v). The Commission also finds that the conduct for which the Respondent has been found responsible renders him unfit for duty as a police officer and dangerous to the public. M.G.L. c. 6E, § 10(a)(xvi). 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), (13); 555 CMR 1.10(4)(e).

By vote of the Commission on January 23, 2024.

In accordance with M.G.L. 30A, § 14, a party aggrieved by this decision 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 Appellant, or the Appellant’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).

Notice to: Justin Chappell, Respondent.
 Timothy D. Hartnett, Esq., Commission Enforcement Counsel
 Weymouth Police Department, Agency

Date Issued: January 23, 2024

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

In the Matter of) Case No. 2023-007-S
) (PI-2023-03-16-001)
Justin Chappell)

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

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). Justin Chappell (“Respondent”) did not answer, appear, and defend against the allegations of misconduct in the Order to Show Cause (“OTSC”). The Respondent also did not 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 decision as final, and proceed to determine the discipline to be imposed against the Respondent.

II. Procedural History

1. The Division served the Respondent with an OTSC, dated July 18, 2023, by United Parcel Service (“UPS”) and addressed to the Respondent’s last known home address. (; Ex. A – OTSC).
2. The UPS tracking information indicates that the OTSC was delivered on July 21, 2023, at 2:14 p.m. to the Respondent’s last known address. (Ex. B – OTSC UPS Delivery Notification). By operation of law, as established below, the Commission may presume that the Respondent received the OTSC.

3. 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. (Ex. A. The OTSC stated that, if a timely answer were not filed, the Commission may act. (Ex. A). In particular, the Respondent was notified that the Commission would 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). The Respondent failed to file a responsive pleading to the OTSC in a timely manner. (Ex. C – Motion).

4. The Division sent the Motion to the Respondent by UPS on August 17, 2023, to the same last known address used for the OTSC (Ex.C), with delivery made at the front door. (Ex. D – Motion UPS Delivery Notification). By operation of law, the Commission may presume that the Respondent received the Motion and accompanying documents.

5. The cover letter of the Motion, dated August 17, 2023, stated that the Motion was enclosed. I take administrative notice that the OTSC was attached as an exhibit to the Motion. The Respondent failed to respond to the Motion and the OTSC.

III. Allegations Contained in the OTSC

1. In July 2021, 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.

2. On January 23, 2022, while employed at the Weymouth Police Department ("WPD"), the Respondent was under the influence of alcohol, incapacitated to the point that he was placed in protective custody, and acted in a defiant, uncooperative, and argumentative manner with members of the Stoughton Police Department as they attempted to perform their official duties.

3. As a result of his actions on January 23, 2022, and after a corresponding investigation, the WPD concluded that the Respondent engaged in conduct unbecoming an officer. The WPD issued the Respondent a written reprimand.

4. On February 24, 2022, the Respondent delivered two closed-fist strikes to the head of an actively resisting individual.

5. As a result of his actions on February 24, 2022, and after a corresponding investigation, the WPD concluded that the Respondent used excessive force during an arrest and, as discipline, issued a one-day suspension and ordered him to complete remedial training.

6. Despite his retraining, during another arrest on July 2, 2022, and as seen in a video taken with his WPD body-worn camera, the Respondent delivered thirteen closed-fist strikes to the face of an individual whose hands were secured behind his back in handcuffs.

7. As a result of his actions on July 2, 2022, the WPD concluded that the Respondent, despite prior discipline and retraining, again used excessive force during an arrest and scheduled a termination hearing for July 14, 2022.

8. On March 16, 2023, pursuant to 555 CMR 1.02(3)(b), 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)(1)(iii); 10(a)(x); 10(b)(iii).

IV. Exhibits

In ruling on this matter, I consider the Motion filed by the Division and the following exhibits:

Exhibit A: OTSC, dated July 18, 2023.

Exhibit B: OTSC UPS Delivery Notification, dated July 21, 2023.

Exhibit C: Motion for Default and Final Decision, dated August 17, 2023.

Exhibit D: Motion for Default UPS Delivery Notification, dated August 19, 2023.

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 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 chapter 30A; . . .

2. Pursuant to M.G.L. c. 6E, § 14(a):

A law enforcement officer shall not use physical force upon another person unless de-escalation tactics have been attempted and failed or are not feasible based on the totality of the circumstances and such force is necessary to: (i) effect the lawful arrest or detention of a person; (ii) prevent the escape from custody of a person; or (iii) prevent imminent harm and the amount of force used is proportionate to the threat of imminent harm. See also 555 CMR 6.04, 6.05.

3. Pursuant to M.G.L. c. 6E, § 8(c)(1), “[t]he [D]ivision . . . shall initiate a preliminary inquiry into the conduct of a law enforcement officer if the [C]ommission receives a complaint, report or other credible evidence that is deemed sufficient by the [C]ommission that the law enforcement officer . . . engaged in conduct prohibited pursuant to section 14.”

4. Pursuant to M.G.L. c. 6E, §§ 10(a) and 10(a)(x), “[t]he Commission shall, after a hearing, revoke an officer’s certification if the [C]ommission finds by clear and convincing evidence that . . . the officer used force in violation of section 14.”

5. Pursuant to M.G.L. c. 6E, §§ 10(b) and 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.”

6. Pursuant to M.G.L. c. 6E, §§ 10(b) and 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.”

7. Pursuant to M.G.L. c. 6E, § 10(f), “[t]he [C]ommission shall conduct preliminary inquiries, revocation and suspension proceedings and hearings, and promulgate regulations for such proceedings and hearings, pursuant to... chapter 30A.”

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, 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. Board 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 for any scheduled hearing date would result in the entry of default”); 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, as it “afford[ed] the respondent 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 August 17, 2023, the Division moved for Default Judgment and Final Decision by serving the Motion, with exhibits A through C attached, by UPS. Tracking information indicated

that delivery was made at the front door of the Respondent’s last known address on August 19, 2023. (Exs. D and E).

The notice provided by delivery of the OTSC and the Motion was sufficient. Under Massachusetts case law, there is a presumption that the addressee receives properly deposited mail. Espinal’s Case, 98 Mass. App. Ct. 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.” (citations omitted)). There is at least as much reason to presume that a letter was received where, as here, it was sent by UPS with confirmation of its delivery. Cf. Computone, Inc. v. Tocio, 44 Mass. App. Ct. 489, 493 (1998) (holding that provision of lease requiring notice by certified or registered mail was not violated by delivery through Federal Express, as that method likewise provided proof, and a means of resolving disputes regarding delivery). Nothing in Chapter 6E requires more. 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”). Thus, I presume that the Respondent received the OTSC and Motion that were sent through UPS and delivered to the front door of his last known address.

VII. Discussion

Pursuant to M.G.L. c. 30A, § 10(2), agencies are specifically authorized to “make informal disposition of any adjudicatory proceeding . . . by default.” See Lawless, 466 Mass. at 1011 (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). Pursuant to 801 CMR 1.01(7)(a), a party may request by motion that the Hearing Officer “issue any order or take any action not inconsistent with law or 801 CMR 1.00.” See M.G.L. c. 30A, § 1(3) (defining a “party” to an adjudicatory proceeding). Thus, the Commission is empowered to enter a Default Judgment as its Final Decision and Order in this matter.

No additional process is necessary. In University Hospital, 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 stated that the rule “afford[ed] . . . 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. Id. (providing additional details). In the case before the Commission, the OTSC and the Motion (both sent by UPS 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. The Respondent could have sought more time to respond under 801 CMR 1.01(4)(e). In addition, pursuant to M.G.L. c. 30A, § 14, judicial review of the entire proceeding is available to the Respondent. 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 1011; University Hosp., 396 Mass. at 539; 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. The Respondent was afforded 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).

VIII. Conclusion

The Division's Motion should be granted for the reasons stated above. I recommend that the Commission make this Initial Decision final, find the allegations against the Respondent to be supported, and determine the appropriate discipline. In accordance with the provisions of 555 CMR 1.10(4)(e)(2)(b), any objections to the Initial Decision must be filed with the Commission within 30 days of receipt of the decision..

SO ORDERED.

PEACE OFFICER STANDARDS AND TRAINING COMMISSION
Presiding Officer

Judith A. Cowin

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

Dated: December 6, 2023

Notice to: Justin Chappell, Respondent
Shaun Martinez, Esq., Commission Enforcement Counsel
Weymouth Police Department, Agency