

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

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| In the Matter of |) | Case No. 23-001-C (ED22-001-C) |
| |) | Certification No. BRE-R2022-1428463 |
| Michael Brennan |) | |
| |) | |
| |) | |

FINAL DECISION

(Pursuant to M.G.L. c. 30A, § 11(8); 555 CMR 1.10(4)(e))

Summary of Decision

The Massachusetts Peace Officer Standards and Training Commission (“Commission”) affirms Appellant Michael Brennan’s denial of recertification as a law enforcement officer (“officer”). While Mr. Brennan has served as a part-time officer in Massachusetts for over 14 years, the Commission’s Division of Police Certification (“Division of Certification”) is statutorily prohibited from recertifying him as an officer because his name is listed in the National Decertification Index (“NDI”), which is maintained by the International Association of Directors of Law Enforcement Standards and Training.¹ It is undisputed that Mr. Brennan consented to have another jurisdiction list his name in the NDI and admitted to having conducted an improper search for information using Criminal Justice Information Services (“CJIS”) while employed as an officer in Massachusetts.

Decision

On November 30, 2022, pursuant to 555 CMR 7.10: Possible Action Following Decision Declining to Grant Full Recertification, Mr. Brennan petitioned the Executive Director of the Commission and sought review of the denial of his recertification as an officer in Massachusetts by the Division of Certification on October 10, 2022. The Executive Director reviewed Mr. Brennan’s request and affirmed the Division of Certification’s decision to deny recertification of Mr. Brennan because his name appears in the NDI. The Executive Director cited M.G.L. c. 6E, § 4(f)(2), added by St. 2020, c. 253, § 30, which mandates that “[t]he commission shall not issue a certificate to an applicant . . . whose name is listed in the [NDI].” Mr. Brennan requested a hearing before the full Commission concerning the Executive Director’s decision. The Chair of the Commission presided over a remote pre-hearing conference on February 28, 2023, and a remote hearing on the merits was conducted before the full Commission on March 9, 2023.² The Commission recorded the hearing and made a copy of the recording available to the parties, upon

¹ The NDI serves as a national registry of certificate or license revocation actions relating to officer misconduct. The records contained in the NDI are provided by participating state government agencies. <https://www.iadlest.org/our-services/ndi/about-ndi>.

² The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01 (formal rules), generally apply to adjudications before the Commission, with Chapter 6E or any Commission rules taking precedence. 555 CMR 1.10(4) (conduct of hearings).

request.³ Both parties submitted post-hearing memoranda. For the reasons stated herein, the determination of the Executive Director is affirmed.

FINDINGS OF FACT

The parties offered into evidence a total of 19 exhibits at the full hearing: 16 by Mr. Brennan and 3 by the Respondent. Only one witness testified—Mr. Brennan on his own behalf—and the Respondent did not call any witnesses. Peter H. Noone, Esq. represented Mr. Brennan, and Shaun Martinez served as Enforcement Counsel on behalf of the Respondent.

Based on the exhibits; the testimony of Mr. Brennan; taking administrative notice of all pleadings filed in the case, and pertinent rules, statutes, regulations, and policies; and drawing reasonable inferences from the credible evidence, the Commission makes the following findings of fact.

Appellant's Background

1. In 2008, the Plymouth County Sheriff's Office hired Mr. Brennan as a part-time Deputy Sheriff, and he remained employed by that office at the time of the hearing before the full Commission. (Exhibit A-1; Brennan Testimony).
2. The Plymouth County Sheriff's Office sponsored Mr. Brennan to attend training at the Municipal Police Training Committee ("MPTC") Academy, where he successfully completed the basic training program for reserve/intermittent officers, which was the designated training for part-time officers in 2008. (Ex. A-1; Brennan T.).
3. Mr. Brennan's responsibilities as a part-time Deputy Sheriff for Plymouth County Sheriff's Office included the care and custody of federal, state, and local inmates and traffic details. (Brennan T.). Mr. Brennan also had the authority to make arrests. (Brennan T.). In his capacity as a part-time Deputy Sheriff, Mr. Brennan did not access CJIS as a part of his duties. (Brennan T.).
4. In 2010, in addition to his employment at the Plymouth County Sheriff's Office, Mr. Brennan worked as a district security officer for the United States Marshals Service on a part-time contract basis. (Ex. A-1; Brennan T.).
5. From 2014 to 2019, Mr. Brennan volunteered as a part-time Special Police Officer for the town of Rockland, Massachusetts. (Brennan T.). Serving in that capacity, he completed approximately 270 unpaid cruiser shifts, trained new officers, and volunteered for community service projects. (Ex. A-1). While working for the Rockland Police Department, Mr. Brennan accessed CJIS for law enforcement purposes. (Brennan T.).
6. On December 31, 2020, Governor Charles D. Baker signed into law An Act Relative to Justice, Equity and Accountability in Law Enforcement in the Commonwealth. St. 2020, c. 253.
7. In 2021, Mr. Brennan sought full-time employment as a Deputy Sheriff with the Maricopa County Sheriff's Office in Maricopa County, Arizona. At the time, he was expecting to relocate to Arizona for family-related reasons. (Ex. A-1; Brennan T.).

³ If there is a judicial appeal of this decision, the appellant in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that he wishes to challenge the decision as unsupported by the substantial evidence, arbitrary or capricious, or an abuse of discretion. See Mass. Super. Ct. Standing Order 1-96. If such an appeal is filed, the Commission can provide the recording to the Appellant to transcribe the hearing.

8. In May 2021, Mr. Brennan received an offer of employment from the Maricopa County Sheriff's Office, conditioned upon completion of an in-person interview and a polygraph examination. (Ex. A-1; Brennan T.).
9. In July 2021, the Maricopa County Sheriff's Office forwarded Mr. Brennan's employment file to the Arizona Peace Officer Standards and Training Board ("Arizona POST") for mandatory review. (Ex. A-1).
10. In August 2021, Arizona POST opened an administrative investigation of Mr. Brennan because of a suspected violation of Arizona POST rules for certification. (Exs. A-1, A-6, A-7, and A-8; Brennan T.).
11. Arizona POST denied Mr. Brennan's application because he answered "yes" on his polygraph examination when asked if he had ever broken the law. (Exs. A-1 and A-5; Brennan T.). Mr. Brennan disclosed during the interview that in 2015, while volunteering with the Rockland Police Department, he accessed CJIS to search for the address of the mother of his then-girlfriend. (Ex. A-1; Brennan T.). Mr. Brennan asserted that the two women were estranged, and the girlfriend was concerned for her elderly mother's well-being. (Ex. A-1; Brennan T.).
12. On September 1, 2021, Mr. Brennan signed a Consent Agreement, Decision and Order on Denial of Peace Officer Certification with the Arizona POST and agreed to the denial of peace officer certification in Arizona without admitting any misconduct or failure to meet minimum qualifications. (Exs. A-1, A-4, A-9, and A-10; Brennan T.). Mr. Brennan also "agree[d] that this consent to denial of peace officer certification shall permanently bar [him] from work as a certified peace officer in Arizona, as required by A.A.C. R13-4-105(A)(8)." (Ex. A-10).
13. The consent agreement stated that Mr. Brennan understood that Arizona POST participates in the NDI and that Arizona POST would list his name in the NDI as a denial of peace officer certification. (Ex. A-10; Brennan T.).
14. Mr. Brennan was subsequently listed in the NDI. (Ex. R-1; Brennan T.).
15. Arizona POST had previously revoked an officer's certification for accessing the Arizona CJIS ("ACJIS") database without a valid law enforcement purpose and releasing sensitive law enforcement information from the database to a third party. (Ex. A-14).
16. In 2022, Mr. Brennan attended the MPTC Bridge Academy in Massachusetts to maintain his position as a Plymouth County Deputy Sheriff and completed the requisite coursework.⁴ (Ex. A-1; Brennan T.).
17. Mr. Brennan subsequently sought recertification from the Commission to serve as an officer in Massachusetts. (Ex. R-5).
18. At the time of the hearing, Mr. Brennan's duties as a Deputy Sheriff at the Plymouth County Sheriff's Office were limited to hospital details because he is not certified. (Brennan T.).

Current Appeal

19. On October 10, 2022, the Division of Certification denied Mr. Brennan's application for recertification due to the listing of his name in the NDI. (Ex. R-5).

⁴ The Bridge Academy is a supplemental training program offered by the MPTC for reserve/intermittent officers, who are employed as part-time officers, to receive more comprehensive training approximating the MPTC training required for full-time employment as an officer. <https://www.mass.gov/mptc-bridge-academy>. The MPTC mandated the Bridge Academy for part-time officers after the passage of the 2020 Act Relative to Justice, Equity and Accountability in Law Enforcement in the Commonwealth. St. 2020, c. 253, § 102.

20. On November 30, 2022, pursuant to 555 CMR 7.10(1): Executive Director Review, Mr. Brennan requested Executive Director review of the Division of Certification’s denial of his recertification. (Ex. A-1).
21. On December 20, 2022, the Executive Director determined that the Division of Certification correctly denied Mr. Brennan recertification as an officer based on his listing in the NDI (Case No. ED22-001-C). (Ex. R-10).
22. Mr. Brennan appealed the determination of the Executive Director and requested a hearing before the full Commission pursuant to 555 CMR 1.10(3): Timing of Appeals from a Decision Declining to Certify or Recertify and 7.10(2): Opportunity for Hearing.

APPLICABLE LEGAL STANDARD

The Division of Certification reviews each officer’s application for recertification and provides written notification of a decision on the application for recertification to the officer. 555 CMR 7.07(1). Within 21 days of a decision by the Division of Certification declining to grant full recertification, an officer may submit a written petition to the Executive Director requesting review of the Division of Certification’s decision. 555 CMR 7.10(1)(a). Following the Executive Director’s review, an officer, if still aggrieved, may request a hearing before the Commission concerning an application for recertification. 555 CMR 7.10(2).

Appeals of a decision by the Commission declining to certify or recertify an officer are generally subject to adjudicatory hearings held by the full Commission, unless, in the Chair’s discretion, the matter should be heard in the first instance by a presiding officer selected pursuant to a policy established by the Commission. M.G.L. c. 6E, § 4; 555 CMR 1.10(1)(d).

The Commission “may not reverse a prior decision to deny the certification or recertification of an officer unless the commission determines, based on substantial evidence, that certification is warranted pursuant to M.G.L. c. 6E, § 4.” 555 CMR 1.10(4)(c)(3). “Substantial evidence” means such evidence as a reasonable mind might accept as adequate to support a conclusion.” M.G.L. c. 30A, § 1(6). “Evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely on in the conduct of serious affairs.” M.G.L. c. 30A, § 11(2); 555 CMR 1.10(b)(2).

ANALYSIS

The Act Relative to Justice, Equity and Accountability provided for certain individuals to be automatically certified as officers for a period of time. St. 2020, c. 253, § 102. It stated, in relevant part, that “[a]ll law enforcement officers who have completed a reserve/intermittent training program on or before [July 1, 2021] shall be certified as of [July 1, 2021].” St. 2020, c. 253, §§ 102(b) and 122. In 2008, Mr. Brennan completed his MPTC reserve/intermittent training to serve as a part-time officer with the Plymouth County Sheriff’s Office. (Ex. A-1; Brennan T.) Thus, he received automatic certification by law. Pursuant to the Act, Mr. Brennan’s certification expired on July 1, 2022, because his last name begins with B. See St. 2020, c. 253, § 102(d) (stating that certification expired on July 1, 2022, for officers whose last names begin with letters A through H).

With respect to officers who had only completed a reserve/intermittent training program, the MPTC required additional training prior to the expiration of their automatic certification. See

<https://www.mass.gov/mptc-bridge-academy>. St. 2020, c. 253, §§ 102(b) and 122. Mr. Brennan attended the additional training provided by the MPTC through the Bridge Academy to receive POST recertification and maintain his part-time position as a Deputy Sheriff with Plymouth County. (Ex. A-1; Brennan T.). According to the Act's express language, Mr. Brennan was not eligible for admission to the Bridge Academy program because of his NDI status. See M.G.L. c. 6E, § 4(d) (stating "[n]o person shall be eligible for admission to police schools, programs or academies approved by the [MPTC]" if listed in the NDI). Mr. Brennan's completion of the Bridge Academy training does not entitle him to recertification because of his ineligibility for such training.

The Commission has broad powers "necessary or convenient to carry out and effectuate its purposes." M.G.L. c. 6E, § 3(a). They include, but are not limited to, enforcing violations of Chapter 6E, certifying qualified applicants, and denying an application for recertification for any cause that the Commission deems reasonable. M.G.L. c. 6E, §§ 3(a)(1), (a)(3), and (a)(4). The Commission does not, however, have authority to override the express language of a controlling statute – here, certification standards. Under M.G.L. c. 6E, § 4(f)(2), the Commission is prohibited from recertifying an applicant "whose name is listed in the [NDI]...." As further stated in the Act, "[n]o person shall be eligible ... for appointment as a law enforcement officer...if they are listed in the [NDI]...." M.G.L. c. 6E, § 4(d).

Pursuant to the September 2021 consent agreement signed by Mr. Brennan, Arizona POST placed Mr. Brennan's name in the NDI for a CJIS search for information on his then-girlfriend's estranged mother. (Exs. A-1 and A-10; Brennan T.). Mr. Brennan admitted to unlawfully searching the CJIS database while he served as a part-time (volunteer) officer with the Rockland Police Department. (Ex. A-1; Brennan T.). In response to the question during the polygraph examination, Mr. Brennan affirmatively stated that he knew he had broken the law. (Exs. A-1 and A-5; Brennan T.). Mr. Brennan understood that Arizona POST participates in the NDI and that Arizona POST would list him in the NDI as having been denied peace officer certification in Arizona. (Ex. A-10; Brennan T.).

Moreover, Mr. Brennan signed the consent agreement in Arizona (in October 2021) about eight months after Governor Baker signed the legislation that precluded any individual listed in the NDI from being recertified as a Massachusetts law enforcement officer (in December 2020). (Ex. A-10); see St. 2020, c. 253, § 30. It would have been prudent for Mr. Brennan, as a law enforcement officer, to become familiar with the provisions of the legislation upon its enactment, or at least to have consulted the law before signing the agreement in Arizona. To the extent he was not aware of the law's provisions, "ignorance of the law is no excuse." Commonwealth v. Belanger, 30 Mass. App. Ct. 31, 33 (1991).

In an earlier proceeding, Arizona POST had revoked an officer's certification for accessing the ACJIS database without a valid law enforcement purpose and releasing sensitive law enforcement information found to a third party. (Ex. A-14). Massachusetts POST is empowered, within its broad authority, to do the same. M.G.L. c. 6E, § 3(a).

Chapter 6E of the General Laws provides that the Commission may "not issue a certificate to an applicant" "whose name is listed in the [NDI]...." M.G.L. c. 6E, § 4(f)(2). Mr. Brennan's name is listed in the NDI. Consequently, he does not meet the minimum standards for certification. M.G.L. c. 6E, § 4(f)(1). Accordingly, the Commission does not find substantial evidence to

support a determination that recertification is warranted. Indeed, there is substantial evidence to support the Executive Director's decision to not recertify Mr. Brennan as an officer in Massachusetts.

CONCLUSION

For the above reasons, the Executive Director's determination is **affirmed**. This is the final decision of the Commission. M.G.L. c. 30A, §§ 11(8) and 13; 555 CMR 1.10(4)(e) and 7.11.

By vote of the Commission (no recusals) on April 13, 2023.

A party aggrieved by this decision may commence an appeal to the Superior Court within thirty days in accordance with M.G.L. c. 30A, § 14. After initiating proceedings for judicial review in Superior Court, the Appellant, or his 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 in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice to: Peter H. Noone, Esq. (Appellant)
Shaun Martinez, Commission Enforcement Counsel (Respondent)
Plymouth County Sheriff's Office (Agency)

Date Issued: April 21, 2023