



Massachusetts POST Commission

100 Cambridge Street, 14th Floor, Boston, MA 02114

In the Matter of)	
Paul E. Higgins Jr.,)	Case No. ED23-004-C
Massachusetts State Police)	
(MPTC User ID: 0593-5312))	Certification No. HIG-R2022-2754752

Determination of the Executive Director

(Review of Division of Police Certification Decision Pursuant to 555 CMR 7.10(1))

The above-captioned matter comes before the Executive Director of the Massachusetts Peace Officer Standards and Training Commission (“Commission”), through a request for review regarding the recertification of Paul E. Higgins Jr. (“applicant”).

In connection to the applicant’s recertification application, on August 29, 2022, Massachusetts State Police (“Department”) Lieutenant Colonel John D. Pinkham submitted a non-attestation, declining to attest to the applicant’s good moral character and fitness for duty as a law enforcement officer because of his involvement in certain incidents in the following two cases:

1. IAS2015-0045 – this case pertained to various incidents that occurred between 2014 and 2017, including improper association with known criminals and failure to discontinue those relationships in defiance of an order; as a subject of a federal Drug Enforcement Administration investigation, providing inaccurate responses; conducting inappropriate Criminal Justice Information Services (“CJIS”)/ Registry of Motor Vehicles (“RMV”) queries, violations of the Department’s social media policy; and failure to inform the department and the Registry of Motor Vehicles of a change of address. These actions resulted in eight sustained charges:
 - a. [Violation of rules] Posted inappropriate content on Twitter, Instagram; posted Department intellectual property on social media.
 - b. [Violation of rules] Posted inappropriate content on Twitter, Instagram; posted Department intellectual property on social media.
 - c. [Unsatisfactory Performance] Associated with known criminals.
 - d. [Unsatisfactory Performance] Violated Dept's Confidentiality Agreement/CORI laws by disseminating CJIS information.
 - e. [Unsatisfactory Performance] Responded inaccurately to questions by DEA Agent.
 - f. [Unsatisfactory Performance] Repeated infractions of [the Department’s] Rules,

Regulations, Policies, Procedures, Orders, Directives (performed 275+ improper CJIS queries).

- g. [Insubordination] Disregarded a direct order from Major Hughes to terminate contact with known criminals.
- h. [Residence] Failed to notify Department/RMV of address change.

The discipline imposed was a suspension without pay for 16 months, which was the duration of the investigation.

- 2. IAS2017-0035 – this matter stemmed from events that allegedly occurred on or about June 30, 2017. According to the Department's explanation for its non-attestation, during a response by the Laconia Police to a call regarding a fight or disturbance at a bar, a female alleged that she had been hit by a male and allegedly pointed at the applicant; the applicant was ordered several times to stop, but he ran off from the Laconia officers; he was pursued by foot and subsequently taken into custody after being hit by Taser probes discharged by a Laconia Police. This incident resulted in one sustained charge:
 - a. [General Conduct] [The applicant] fled and resisted lawful detention by a police officer from the Laconia Police Department in New Hampshire.

The discipline imposed was time served concurrent with the discipline imposed in the above case IAS2015-0045.

On October 18, 2022, the Commission Division of Certification notified the applicant that it declined to recertify him, stating, in relevant part:

- 1. Your agency has declined to attest that you are of good moral character and fit for employment in law enforcement.

On March 16, 2023, the applicant requested review by the Executive Director of that decision. At around the same time, the applicant requested an extension of time to submit a response given that the applicant was on injury leave and had a medical procedure around mid-April of this year. On May 9, 2023, this office received a packet from the applicant's counsel dated May 5, 2023, containing the petition for review of denial of recertification, which included a memorandum of support and 15 exhibits.

Determination

After reviewing the applicant's application for recertification as a law enforcement officer and relevant submissions, I rely on factors, including the following:

- 1. The applicant has been employed by the Department since April 3, 2006.
- 2. On August 13, 2013, the applicant was informed by MSP Major Francis Hughes that there were individuals involved in criminal activities with some connection to the applicant, and the applicant was ordered to avoid those individuals.

3. At various times between 2013 and 2015, the applicant made eight posts on social media that violated Department social media policies, including re-posting photos that had been posted on the official Department public website without approval of the Colonel or for including content or responses that could be considered off-color humor and/or inappropriate by some members of the public.
4. On December 7, 2015, the applicant reported to two Drug Enforcement Administration (“DEA”) agents that he had told a friend that this friend had an active warrant in Las Vegas for an unpaid casino marker (casino cash advance for wagering). On May 19, 2016, the applicant was notified by the DEA and US Attorney that he had not committed a computer crime and they would be ending the investigation of their intended targets with no charges. Soon thereafter, the Department’s Internal Affairs Unit initiated an investigation on the same set of facts for improper disclosure of CJIS information.
5. The applicant was suspended without pay for 16 months, from August 2, 2017 through December 4, 2018, for events associated with investigations IAS2015-0045 and IAS2017-0035. Both cases were jointly resolved on or about December 1, 2018. At that time, the applicant was offered certain terms by the Department if he waived his right to a hearing before the Trial Board. These terms are described in a “Settlement Agreement and Release.”
6. The Settlement Agreement & Release, sometimes also called a “Last Chance Agreement,” represented “...the final, full, and total settlement of the Department’s preferred charges against [the applicant] in IAS Case 2015-0045 and 2017-0035 and any and all related discipline, appeals, grievances, claims or complaints.”
7. As part of the Settlement Agreement the applicant acknowledged and agreed to be terminated at the Department, if at any time after the execution of the agreement he is charged with and subsequently adjudicated guilty of any violation of a Department rule, regulation or procedure concerning the association with persons who he knows or reasonably should know to have a criminal history; or the inappropriate access and/or dissemination of criminal offender record information and/or any other Class A offense.
8. Since the execution of the Settlement Agreement, the applicant has not engaged in any misconduct or violated any rule or policy of the Department. This includes an incident reported by the applicant to his superiors, dated August 10, 2020, of a “no contact interaction” not initiated by the applicant with an individual listed as those individuals to avoid in the Settlement Agreement.
9. The applicant’s complete disciplinary record, submitted to the Commission by the Department pursuant to Section 99 of *An Act Relative to Justice, Equity and Accountability in Law Enforcement in the Commonwealth*, St. 2020, c. 253, included:
 - a. IAS2015-0045 for violations of policies procedures and operations,

dissemination of information and improper associations (conduct). The multiple charges are associated with dissemination of information, conduct and policy, procedure, operations. All those charges are associated with the misconduct described above (improper associations, violations of the CJIS policies, violations of the social media policy and failure to report a change of address).

- b. IAS2017-0035 related to one off-duty incident in violation of policy, procedure and operations and conduct.

The Commission's enabling statute sets forth minimum certification standards, one of which is "being of good moral character and fit for employment in law enforcement, as determined by the [C]ommission." M.G.L. c. 6E, § 4(f)(1)(ix). The Commission's regulations further elaborate on the standard for evaluating good moral character and fitness, which includes consideration of an applicant's on-duty and off-duty conduct; adherence to state and federal law, and standards of ethics and conduct adopted by the employing agency or as set forth in the Law Enforcement Code of Ethics and Standards of Conduct most recently adopted by the International Association of Chiefs of Police; and worthiness of public trust and of the authority given to law enforcement officers. See 555 CMR 7.05(1) and (2).

The standards in 555 CMR 7.05(1) and (2) call for a holistic approach to assessing an applicant's good moral character and fitness for employment. The law enforcement agency and the Division of Certification are expected to consider the totality of the circumstances, weighing all factors, favorable and unfavorable. The agency and the Division of Certification, in their evaluation, may consider "instances of imposed discipline [and] patterns of misconduct" along with "relevant education, specialized training, professional awards, achievements, [and] commendations by law enforcement agencies or officials or others." 555 CMR 7.05(2).

Between the two instances of discipline reported on the applicant's disciplinary record, I find the two unrelated investigations to be sufficiently outweighed by positive and mitigating factors. The applicant has served as a law enforcement officer for more than 15 years, accounting for the period of his suspension and injury leave. For the first nine years, the applicant had no reported disciplinary record. In what appears to be the most recent employee evaluations of the applicant conducted by the Department for 2022 and part of 2023, the applicant received positive ratings, including "Exceptional" and "Outstanding" ratings for "Knowledge/Compliance/Application of Policy & Procedures, Rules & Regulations, Statute Law, Orders and Directives" and for "Follows Oral and Written Direction of Supervisors." Furthermore, the applicant has submitted 12 letters of support from supervisors and colleagues who have observed the applicant over the years in his capacity as a law enforcement officer. As to the 2017 incident regarding "resisting detention of a law enforcement officer," classified in New Hampshire as a non-criminal violation (and not a felony or misdemeanor), I do not find that this incident impugns the applicant's good moral character.

In my review of the incidents and the applicant's responses to the incidents underlying IAS2015-

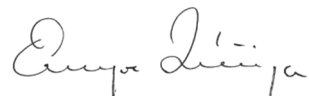
0045, I find the following. The DEA investigation into the applicant never resulted in charges being brought. The applicant has complied with the order to avoid all persons with known ties to any criminal activity since entering into the Settlement Agreement, including self-reporting a subsequent encounter with an individual. I also find the applicant's explanation reasonable that he may not have understood the extent of the original order by Major Hughes as including all social media interactions. The applicant essentially admits to conducting CJIS queries for his "own personal curiosity violating [his] department's policy." The applicant maintains that his use of CJIS was "common practice." I generally do not find "common practice" to be an acceptable excuse, and the improper use of and dissemination of CJIS information is serious and concerning. However, I accept that the applicant has reviewed the Department's Confidentiality Agreement and acknowledges his violation. He also explained that in many of those instances he did so under what he considered "official police business" or with the intent of maintaining the safety of his own community. That said, the applicant should strictly adhere to the requirements of the Department.

The applicant has sufficiently explained and provided context to the events that are the subject of the two investigations. He has complied with the disciplinary action imposed and continues to comply with Department policies and the terms of the Agreement. Therefore, on balance, I find that the series of incidents leading to the Settlement Agreement, do not give rise to a finding that the applicant lacks good moral character and fitness for employment in law enforcement.

Based on my review of the applicant's petition and all the information before me, I have determined that the applicant possesses the requisite good moral character and fitness for employment in law enforcement. Therefore, I hereby **remand** this matter to the Division of Certification with an instruction to issue the applicant a full recertification.

The applicant must remain in compliance with the requirements of Chapter 6E of the Massachusetts General Laws and all rules and regulations promulgated by the Commission for the duration of the applicant's employment as a law enforcement officer.

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



Enrique Zuniga
Executive Director

June 16, 2023
Date