

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

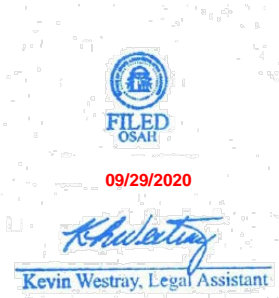
**ANDREW AL-HATTAB,
Petitioner,**

v.

**POLICE OFFICER STANDARD &
TRAINING,
Respondent.**

**Docket No.: 2030514
2030514-OSAH-POST-CERT-222-
Beaudrot**

Agency Reference No.: 007-861-02-19



INITIAL DECISION

I. SUMMARY OF PROCEEDINGS

Andrew Al-Hattab (“Petitioner”) appeals a decision by the Georgia Peace Officer Standards and Training Council (“Respondent” or “POST”) recommending the denial of his application for certification as a peace officer.

The hearing in this case was conducted by video conference before the undersigned on August 6, 2020. Petitioner was self-represented at the hearing. Respondent was represented by Amy M. Radley, Esq., Assistant Attorney General.

Witnesses at the hearing consisted of: Petitioner; Lt. David Kain; Lt. Ron Zara; Zack Lathem, training officer; and Julie Bradley, Director of POST.

Following the completion of the evidentiary hearing in this matter, Petitioner filed a Motion for Rehearing on August 18, 2020. After holding a telephone hearing on Petitioner’s Motion for Rehearing, Petitioner’s motion was denied by Order Denying Petitioner’s Motion for Rehearing, entered on August 31, 2020.

After consideration of the evidence and the arguments of the parties, and for the reasons stated below, Respondent’s decision to deny Petitioner’s application for certification as a peace officer is **AFFIRMED**.

II. FINDINGS OF FACT

1. Petitioner's application to become a POST certified peace officer was initially approved on March 16, 2018. (OSAH Form 1).

2. On January 3, 2019, Petitioner started the Georgia Public Safety Training Commission's ("GPSTC") Basic Law Enforcement Training Course in Athens, Georgia. The course was scheduled to run from January 3, 2019 through March 22, 2019. (OSAH Form 1).

3. During the firearms portion of the training, Petitioner exhibited difficulties in following and utilizing training guidance. (Testimony of Lt. Kain).

4. For instance, on one occasion, Petitioner rejected instruction on how to do something, stating that he was going to "do it my way" instead. Petitioner's response flies in the face of the purpose of training, which is to teach students best practices as taught to them by their licensed instructors for their personal safety and the safety of the public and other officers. (Testimony of Lt. Kain).

5. Despite Petitioner's issues, Lt. Kain did not conclude that Petitioner's issues were insurmountable. Lt. Kain and the other instructors continued to work with Petitioner to complete his training. (Testimony of Lt. Kain).

6. On February 1, 2019, Petitioner was observed loading his firearm by retrieving a magazine from his pocket, rather than from his magazine pouch. Although there is nothing in the applicable regulations that explicitly forbids this practice, this behavior is nonetheless in violation of the training guidelines administered by the instructors. This violation was observed by Lane Acrey, a range instructor, who informed Lt. Zara. (Testimony of Lt. Zara).

7. Petitioner and other students had previously been instructed that they were not to load their firearms from their pocket and that doing so would result in physical punishment (i.e., burpees). (Testimony of Lt. Kain; Testimony of Lt. Zara).

8. When asked by Lt. Zara if Petitioner had loaded from his pocket as reported by Instructor Acrey, Petitioner initially attempted to avoid answering. Ultimately Petitioner admitted he had done so, claiming that one of the other instructors had said that the practice was permissible. (Testimony of Lt. Zara).

9. When Lt. Zara asked Petitioner to identify the instructor who had told Petitioner that it was permissible to load from the pocket, Petitioner responded that he did not know the name of the instructor, but that it was an instructor who was not present on the range that day. Petitioner indicated to Lt. Zara that the instructor wore a beard and shemagh (an article of clothing that is similar to a gaiter that goes around the neck and can be pulled over the face). The only instructor who fit the description provided by Petitioner was Instructor Zack Lathem. (Testimony of Lt. Zara).

10. Upon being informed of these events, Lt. Kain proceeded to contact the instructors who had worked with the cadets during firearms week. None of the instructors indicated that he or she had told Petitioner that it was permissible to load from his pocket. Lt. Kain specifically spoke with Instructor Lathem. (Testimony of Lt. Kain).

11. At the hearing, Instructor Lathem, who is bearded, testified that he wore a shemagh and had a beard at the time in issue. He also testified categorically that he did not instruct Petitioner that it was permissible to load his firearm from his pocket. (Testimony of Instructor Lathem).

12. Based upon his inquiries and discussions with Petitioner and the other officers, Lt. Kain concluded that Petitioner had intentionally lied about being given permission to load from his pocket and so informed Petitioner. (Testimony of Lt. Kain.).

13. In his testimony at the hearing on this matter, Petitioner attempted to explain his statements regarding this incident as arising from various misunderstandings on his part. (Testimony of Petitioner). Petitioner's testimony in this regard was confusing, tortured and, simply put, not credible. The detailed nature of Petitioner's fabrication, involving an excuse allegedly tied to an instructor who was not present on the date of the incident, is particularly troubling, as it suggests a specific intent to mislead.

14. Integrity and honesty are *sine qua non* for those serving as peace officers. Credibility is essential if an officer is to be believed and trusted by fellow officers. Officers must be straightforward and honest and demonstrate unquestioned integrity if they are to be effective witnesses in court proceedings in the prosecution of cases. Particularly in these troubled times, peace officers must demonstrate honesty and integrity in their dealings with fellow officers and the public in order to engender and maintain trust and credibility. (Testimony of Lt. Kain; testimony of Ms. Bradley).

15. Because of Petitioner's dishonesty in connection with the incident, Petitioner was dismissed on February 1, 2019, for violating GPSTC Basic Training Division Cadet Rules and Regulations 1.12.150, Integrity, for lying to the range instructors. (OSAH Form 1).

16. After completing its investigation, the POST Council determined that Petitioner's actions in lying to an instructor violated the POST Act and that Petitioner was no longer qualified to be a candidate for peace officer certification. (OSAH Form 1).

17. On December 4, 2019, the POST Council voted to deny Petitioner's POST Application. (OSAH Form 1)

18. On March 2, 2020, Petitioner timely appealed the POST Council's decision to deny his POST Application. (OSAH Form 1).


III. CONCLUSIONS OF LAW

1. Respondent bears the burden of proof in this matter. Ga. Comp. R. & Regs. 616-1-2-.07(1). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).
2. Respondent may refuse to grant a certification to an applicant upon a determination that the applicant: failed to demonstrate the qualifications or standards for a certificate; knowingly made misleading or deceptive statements; engaged in unprofessional conduct; violated a law, rule, or regulation of this state or other lawful authority that relates to the practice of an officer; committed an act or omission which is indicative of bad moral character or untrustworthiness; or has been discharged by the employing agency. *See* O.C.G.A. §35-8-7.1(a)(1),(2),(6),(7),(8),(11).
3. Revocation or denial of an applicant's certificate is an approved sanction once it has been determined that a violation has occurred pursuant to O.C.G.A. §35-8-7.1(a). *See* O.C.G.A. § 35-8-7.1(b)(1)(A).
4. Respondent has more than met its burden in this case. The evidence is compelling that Petitioner deliberately and intentionally lied. Petitioner's conduct constitutes the intentional making of knowingly deceptive statements and is strongly indicative of untrustworthiness.
5. Why Petitioner lied in this case is unclear and ultimately irrelevant. Petitioner's conduct fully justified Respondent's actions in this matter.

IV. DECISION

Accordingly, Respondent's decision to sanction Petitioner by denial of his application for certification as a peace officer is **AFFIRMED**.

SO ORDERED, this 29th day of September, 2020.



Charles R. Beaudrot
Administrative Law Judge



NOTICE OF INITIAL DECISION

Attached is the Initial Decision of the administrative law judge. A party who disagrees with the Initial Decision may file a motion with the administrative law judge and/or an application for agency review.

Filing a Motion with the Administrative Law Judge

A party who wishes to file a motion to vacate a default, a motion for reconsideration, or a motion for rehearing must do so within 10 days of the entry of the Initial Decision. Ga. Comp. R. & Regs. 616-1-2-.28, -.30(4). All motions must be made in writing and filed with the judge's assistant, with copies served simultaneously upon all parties of record. Ga. Comp. R. & Regs. 616-1-2-.04, -.11, -.16. The judge's assistant is Kevin Westray - 404-656-3508; Email: kwestray@osah.ga.gov; Fax: 404-656-3508; 225 Peachtree Street NE, Suite 400, South Tower, Atlanta, Georgia 30303.

Filing an Application for Agency Review

A party who seeks review by the referring agency must file an application for agency review within 30 days after service of the Initial Decision. O.C.G.A. §§ 50-13-17(a), -41. **In nearly all cases, agency review is a prerequisite for judicial review.** O.C.G.A. § 50-13-19(a).

The application for agency review must be filed with: POLICE OFFICER STANDARD & TRAINING, P O BOX 349, CLARKDALE, GA 30111. Copies of the application for agency review must be served upon all parties of record and filed simultaneously with the OSAH Chief Clerk at 225 Peachtree Street NE, Suite 400, South Tower, Atlanta, Georgia 30303. If a timely application for agency review is not filed and the referring agency does not review the Initial Decision on its own motion, the Initial Decision will become the Final Decision of the referring agency by operation of law. O.C.G.A. §§ 50-13-17(a), -41.