

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



03/21/2022

Devin Hamilton, Legal Assistant

ANDRA GARDNER,
Petitioner,

v.

**GEORGIA PEACE OFFICE STANDARDS
AND TRAINING COUNCIL,**
Respondent.

Docket No.: 2216223
2216223-OSAH-POST-CERT-121-Schroer

Agency Reference No.: 2216223

INITIAL DECISION

I. INTRODUCTION

Petitioner Andra Gardner is a peace officer certified under the Georgia Peace Officer Standards and Training (“POST”) Act. Respondent Georgia POST Council (“Council”) determined that Petitioner’s POST certification should be revoked for violations of the POST Act. Petitioner appealed the proposed revocation but did not contest the Council’s determination regarding the violations of the Act. Accordingly, the Court granted the Council’s Motion for Partial Summary Determination, finding that Petitioner violated the POST Act, and conducted an administrative hearing on the issue of the appropriateness of the proposed sanction on February 18, 2022. Petitioner appeared at the hearing and represented himself, and the Council was represented by Amy M. Radley, Assistant Attorney General. Julie Bradley, the Director of Operations for POST, testified on behalf of the Council.

After careful consideration of all the evidence of record in this case, and based upon a preponderance of evidence, the Court makes the following findings of facts, legal conclusions, and decision.

II. FINDINGS OF FACT

1.

Petitioner was employed as a deputy sheriff with the Burke County Sheriff's Office ("BCSO") from October 2019 to February 2020. Prior to joining BCSO, Petitioner was an officer with the Paine College Police for about five months in 2019, and he worked on and off as a correctional officer from 2000 to 2016. On the evening of February 20, 2020, Petitioner was off-duty and had a few drinks at his home in Augusta. He went out to get wings at a bar and was driving back home when he received a call from a neighbor, who informed him that his front door was open. Suspecting a burglary had occurred, Petitioner entered his home, drew his personal sidearm, and called out, "Police!" He went upstairs and did not see anyone but rushed back downstairs when he heard a noise. He found the backdoor ajar and saw a person in camouflage, running away and jumping the backyard fence. He fired five shots at the fleeing person. (Testimony of Petitioner; Ex. B.)

2.

Petitioner called 911 and Richmond County deputies responded. The deputies interviewed him about the events, and they reported that Petitioner appeared intoxicated. The Richmond County deputies found shell casing from Petitioner's gun outside but saw no signs of the intruder. BCSO was notified about the incident, and Petitioner was immediately terminated from employment due to his violation of use of force rules.¹ (Testimony of Petitioner, Ms. Bradley; Ex. B.)

¹ In the letter of termination, BCSO's Chief Deputy cited Rule 1.3-1 on Reasonable Force, which is defined as "that force, which is reasonable to accomplish a lawful objective; i.e. effect an arrest or protect themselves or others from personal attack, physical resistance, harm or death.... Deputies using deadly force will not do so with the intent to kill or punish a subject, but rather for the sole purpose of stopping a subject's threat of death or serious bodily injury. In all cases, the deputy must have a reasonable belief that the threat of death or serious bodily injury is imminent and immediate." (Ex. B.)

3.

Petitioner acknowledges that his actions on February 20, 2020 were “totally wrong.” He admitted that the person he saw was 200 yards from his house, was running away, and did not appear to have a weapon, and that he fired his gun because he was upset that the person was getting away. He testified, however, that he has learned from this experience and made lasting changes to his life. He no longer drinks alcohol and has participated in eight counseling sessions. He was hired as an officer with the City of Wadley Police Department in November 2020 and has had no further disciplinary issues. In addition, the Chief of Police wrote a letter on Petitioner’s behalf, stating that Petitioner has gone “over and beyond” in his duties as an officer, is highly respected in the community, and is a valued member of the small, understaffed police department. (Testimony of Petitioner; Exhibits P-1, P-2, P-3.)

4.

Ms. Bradley testified that the Council considers Petitioner’s inappropriate use of deadly force to be an almost absolute bar to continued POST certification. According to Ms. Bradley, all peace officers are trained in the holdings of Tennessee v. Garner, which prohibits the use of deadly force against a fleeing, unarmed suspect.² In addition, Petitioner violated another basic rule of law enforcement; to wit, an officer should never conduct a search alone. In fact, Ms. Bradley testified that the Council has rarely, if ever, had a disciplinary case like this because in almost any other instance, the officer would have been criminally charged with a felony for such actions.

² In Tennessee v. Garner, the United State Supreme Court considered a case where police officers responded to a report by a neighbor that someone had broken in next door. When they arrived, they heard a door slam in the house and saw an unarmed teenage boy run across the backyard and begin to climb the fence. The police, convinced that he would elude capture, shot and killed him. 471 U.S. 1, 3-4 (1985). The holding in this case, which Ms. Bradley testified is taught to all officers, was that “[a] police officer may not seize an unarmed, nondangerous suspect by shooting him dead.” As Justice White explained, “[t]he intrusiveness of a seizure by means of deadly force is unmatched. The suspect’s fundamental interest in his own life need not be elaborated upon. The use of deadly force also frustrates the interest of the individual, and of society, in judicial determination of guilt and punishment.” Id. at 9.

Consequently, the Council concluded that the only appropriate sanction for Petitioner's violations is revocation of his certification. (Testimony of Ms. Bradley.)

III. CONCLUSIONS OF LAW

1.

Pursuant to OSAH Rule 7, the Council bears the burden of proof. Ga. Comp. R. & Regs. r. 616-1-2-.07(1)(c). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. r. 616-1-2-.21(4).

2.

The Council was established by the POST Act. O.C.G.A. § 35-8-3(a). It has the authority to discipline a certified peace officer upon a determination by the Council that the peace officer has violated the POST Act. O.C.G.A. § 35-8-7.1(a).

3.

When the Council determines that a peace officer should be disciplined, the Council may impose a number of different sanctions, including a private or public reprimand, suspension, limitation or restriction of the POST certification, or revocation. O.C.G.A. § 35-8-7.1(b)(1)(E). If a peace officer's certification is revoked, he cannot serve as a peace officer in Georgia unless his certification is restored and reissued by the Council. O.C.G.A. § 33-8-7.1(c).

4.

In this case, the Council seeks to revoke Petitioner's certification for violations of four sections of the POST Act. See O.C.G.A. §§ 35-8-7.1(a)(6), (7), (8) and (11). As set forth in the Order Granting Respondent's Motion for Partial Summary Determination, the Court concluded that Petitioner's actions constituted violations on subsection (a) of Code Section 35-8-7.1 of the POST Act, including (6) engaging in unprofessional conduct, (7) violating a law, rule or regulation, (8) committing an act that is indicative of untrustworthiness, and (11) being discharged

from employment for disciplinary reasons. Petitioner's conduct, although apparently an isolated occurrence and incited, in part, by alcohol, demonstrated a willingness to use deadly force out of frustration and a disregard for fundamental tenets of responsible policing. Accordingly, although Petitioner has taken full responsibility for his lapse in judgment and has made changes in his life relating to consumption of alcohol, the Court cannot overlook the gravity of Petitioner's actions during this incident. Consequently, the Court concludes that revocation of Petitioner's certification as a Georgia peace officer is the appropriate sanction in this case, subject to Petitioner's right to seek reinstatement of his certificate in twenty-four months in as provided by Georgia law. See Ga. Comp. R. & Regs. 464-18-.01.

IV. DECISION

For the foregoing reasons, Respondent's decision to revoke Petitioner's POST certification is **AFFIRMED**.

SO ORDERED, this 21st day of March, 2022.

Kimberly W. Schroer

Kimberly W. Schroer
Administrative Law Judge

