

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
FROM THE ALASKA POLICE STANDARDS COUNCIL**

In the Matter of)	
)	
KEVIN GILMORE)	OAH No. 15-1087-POC
_____)	Agency No. APSC 2014-14

DECISION

I. Introduction

In 2008, Kevin Gilmore was discharged from employment as a police officer because he could not complete the training course. In subsequent applications for police certification and employment as a police officer, Mr. Gilmore answered “no” when asked whether he had ever been discharged from employment. He attested that his answers were truthful, but they were not. The Executive Director has proved substantial doubt about Mr. Gilmore’s honesty. The Director has also proved that he was not truthful on applications. Each of these is a ground for revoking his certificate. Mr. Gilmore’s police officer certificate is revoked.

II. Facts

Kevin Gilmore is a 29-year-old resident of Alaska. In February 2008, he was hired by the Bethel Police Department. Bethel Police Department sent Mr. Gilmore to the Alaska Law Enforcement Training Program at the Department of Public Safety’s Training Academy in Sitka.¹ After about one month, and before completing the academy, on March 11, 2008, he was terminated by the Bethel Police Department for unsatisfactory performance at the academy.²

In May 2011, after completing law enforcement training in Fairbanks, Mr. Gilmore applied for the position of a police officer with the North Slope Borough Police Department. He submitted a sworn personal history statement (F-3) to the Alaska Police Standards Council. He did not disclose his employment with Bethel Police Department on the F-3. In response to a question specifically asking if he had ever been discharged from a position, he checked “no.”³ His employment interviews and questionnaire with the North Slope Police Department included assurances that he had listed all employment for the past 10 years, had never been fired, and that

¹ Alzaharna Aff.; Admin. Rec. at 26.
² Alzaharna Aff.; Admin. Rec. at 31.
³ Alzaharna Aff.; Admin. Rec. at 38.

his answers to all questions were accurate.⁴ In November 2013, he applied for certification as a police officer (F-7) with the Alaska Police Standards Council. The application, made under penalty of perjury, answered “no” to the question, “Have you ever been discharged, asked to resign, or involuntarily terminated from employment.”⁵ He was issued a certificate and hired by the North Slope Police Department.⁶

In April 2014, Mr. Gilmore resigned from the North Slope Police Department. He applied to other police departments in the state, including the state troopers. As a result, his failure to report his termination from the Bethel Police Department was discovered.⁷

On July 13, the Executive Director of the Alaska Police Standards Council filed an accusation seeking to revoke Mr. Gilmore’s police certificate. The accusation alleged two counts of violating regulations adopted by the Council. First, it alleged a violation of 13 AAC 85.110(a)(1), which makes omission of required information from an application for certification grounds for revocation of a certificate.⁸ Second, it alleged a violation of 13 AAC 85.010(a)(3), which requires that a police officer be of good moral character.⁹ Violation of this regulation is also a ground for revocation.

On July 30, 2015, Mr. Gilmore filed a notice of defense.¹⁰ The Executive Director referred the accusation to the Office of Administrative Hearings to hear the case. Both parties were notified that a telephonic case planning conference would be held on September 10, 2015. Mr. Gilmore was called but he did not answer his telephone or participate in the conference. A hearing was scheduled for November 11, 2015, and a notice of hearing sent to Mr. Gilmore. A prehearing conference was scheduled for November 6, 2015. Mr. Gilmore was called, but again did not answer. On the day of the hearing, Mr. Gilmore was called. He did not answer. The attorney for the Executive Director, John Novak, stated that he had called Mr. Gilmore in an attempt to prepare for hearing, but Mr. Gilmore did not answer his calls. The hearing proceeded in Mr. Gilmore’s absence.

⁴ Alzaharna Aff.; Admin. Rec. at 217; 237.

⁵ Alzaharna Aff.; Admin. Rec. at 43.

⁶ Alzaharna Aff.

⁷ Alzaharna Aff.

⁸ Under 13 AAC 85.110(a)(1), “The council will, in its discretion, revoke a basic, intermediate, or advanced certificate upon a finding that the holder of the certificate (1) falsified or omitted information required to be provided on an application for certification at any level, or in supporting documents.”

⁹ Under 13 AAC 85.010(a)(3), “A participating police department may not hire a person as a police officer unless the person meets the following qualifications: . . . (3) is of good moral character.” Failing to meet the good moral character requirement is grounds for revocation under 13 AAC 85.110(a)(3).

¹⁰ Admin. Rec. at 12.

III. Discussion

Under the Administrative Procedures Act, when a respondent does not appear at a hearing, an agency may take action based upon affidavit evidence and other evidence in its record. Here, the Executive Director has proved that Mr. Gilmore was discharged from the Bethel Police Department. The Director also proved he omitted this fact from his applications for certification and employment as a police officer, even though he attested under oath or under penalty of perjury that his applications were complete and accurate.

A lack of good moral character is shown by acts or omissions that would raise doubt about a person's honesty, fairness, respect for the rights of others, and respect for the law.¹¹ The Executive Director does not have to prove all four elements, but must prove that, taken together, the officer lacks good moral character.¹²

Under the Council's regulations, being discharged from a police department for incompetence or other reason that affects the officer's fitness to perform job duties is a serious matter that would be grounds for denying or revoking a certificate.¹³ Here, Mr. Gilmore's actions indicate intent to deceive in order to gain a benefit—to keep his discharge hidden in order to gain employment as a police officer. Under the Council's previous cases, being dishonest under oath is a very serious matter that may make the officer untrustworthy and could significantly undercut

¹¹ 13 AAC 85.900(7).

¹² *In re E.X.*, OAH No. 13-0473-POC at 17-18 (Police Standards Council 2013).

¹³ 13 AAC 85.100 (a)(2) states

(a) The council will, in its discretion, deny a basic certificate upon a finding that the applicant for the certificate . . . (2) has been discharged, or resigned under threat of discharge, from employment as a police officer in this state or any other state or territory for cause for inefficiency, incompetence, or some other reason that adversely affects the ability and fitness of the police officer to perform job duties or that is detrimental to the reputation, integrity, or discipline of the police department where the police officer worked.

13 AAC 85.110 (a)(2) states

“The council will, in its discretion, revoke a basic, intermediate, or advanced certificate upon a finding that the holder of the certificate . . . (2) has been discharged, or resigned under threat of discharge, from employment as a police officer in this state or any other state or territory for cause for inefficiency, incompetence, or some other reason that adversely affects the ability and fitness of the police officer to perform job duties or that is detrimental to the reputation, integrity, or discipline of the police department where the police officer worked.”

the ability of the officer to testify in court.¹⁴ Being dishonest to gain a benefit is evidence of a lack of moral character for which revocation is appropriate.¹⁵

Although we could imagine a circumstances in which a failure to report something that happened in the past could be an innocent mistake rather than an intent to deceive, here, Mr. Gilmore has not put on any such case. The record contains some correspondence from Mr. Gilmore, in which he alleges that he forgot about the Bethel employment because he was never sure if he was an employee.¹⁶ This line of argument is not persuasive. He was, in fact, an employee of the Bethel Police Department.¹⁷ Furthermore, his discharge from the academy meant that he had to go through significant steps to obtain training on his own. He was not likely to forget this incident. An honest applicant would have disclosed the circumstances, even if unsure of his employment status at the time of the discharge from the academy.

In addition, Mr. Gilmore did not actually put on argument or evidence to support this theory. His lack of participation in the hearing may be viewed as support for the inference that he has no reasonable argument that his failure to report the discharge was an innocent mistake. On this record, therefore, we conclude that his actions were intended to deceive the Council and his prospective (and, in one case, actual) employers.

The Executive Director has proved the elements of both counts of the accusation. Mr. Gilmore failed to disclose material facts on applications for certification and employment and his actions raise substantial doubt about his honesty. This means that the Council could exercise its discretion to revoke Mr. Gilmore's certification. The remaining question is whether these facts establish a basis for revocation.

Although Mr. Gilmore's conduct does not implicate all of the elements of good moral character, the Council's previous cases demonstrate a strong policy regarding honesty—where the doubt about honesty is substantial, the Council will revoke.¹⁸ Furthermore, the Council's regulations single out the issue of being truthful on an application as a special case. Here, Mr. Gilmore should not be placed in a better position because of his failure to disclose than he would

¹⁴ *In re Much*, OAH No. 13-0288-POC at 27 (Police Standards Council 2013), *aff'd Much v. Alaska Police Stnds. Coun.*, Case No. 3AN-14-4466CI (Alaska Super. Ct. 2016).

¹⁵ *Id.*

¹⁶ Admin. Rec. at 48.

¹⁷ Admin. Rec. at 24, 25, 32.

¹⁸ *See, e.g., In re Hazelaar*, OAH No. 13-0085-POC at Order Adopting the Executive Director's Proposal for Action and the Recommended Decision as Revised by this Order and Revoking Cpl. Hazelaar's Police Certificate (Police Standards Council 2014). *Hazelaar* is on appeal. It is not cited here as precedent for an issue of law; it is cited as evidence of the Council's policy with regard to exercising its discretion to revoke when it has substantial doubt about honesty.

have been in if he had been honest in his application. Given that we have no evidence of an innocent mistake, revocation is required for his failure to disclose. In sum, revocation of his certificate is appropriate under both 13 AAC 85.110(a)(1) and (3).

IV. Conclusion

Kevin Gilmore's police certificate is revoked effective on the day this decision is adopted by the Alaska Police Standards Council.

DATED this 4th of February, 2016.

By: Signed
Stephen C. Slotnick
Administrative Law Judge

Adoption

The Alaska Police Standards Council adopts this Decision under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 10th day of March, 2016.

By: Signed
Luis Nieves
Vice-Chair, Alaska Police Standards Council

[This document has been modified to conform to the technical standards for publication.]