

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

In the Matter of:)
)
 THOMAS KAWIKA LEE) OAH No. 16-0555-POC
) APSC No. 2015-13
 _____)

DECISION

I. Introduction

Thomas Lee was a correctional officer with the State of Alaska. Mr. Lee also serves in the Army National Guard (Guard). The Guard conducted a random urinalysis on Mr. Lee; he tested positive for marijuana. Mr. Lee self-reported the positive marijuana test to the Department of Corrections, with an explanation that he had been unintentionally exposed when he ate food from his workplace, which, unknown to him, contained marijuana. He, later, in a disciplinary meeting disclosed that he had smoked marijuana before his urinalysis and fabricated the story regarding the food.

The evidence demonstrates that Mr. Lee intentionally consumed marijuana and then lied about it on multiple occasions, although he ultimately admitted to having voluntarily smoked marijuana. As a result, there are two separate and distinct grounds for revoking Mr. Lee’s correctional officer’s license. First, he admittedly used marijuana while a correctional officer. Alaska regulation, 13 AAC 85.270(b)(2)(A), requires that a correctional officer’s certification be revoked if he or she uses marijuana while employed as a correctional officer. Second, he lied about his use of marijuana. Although, he later admitted to its use, his multiple false statements that he unknowingly consumed marijuana were acts of dishonesty, which the Council has repeatedly held to constitute a lack of the good moral character required of a law enforcement officer. Lack of good moral character constitutes discretionary grounds for revocation. Accordingly, the revocation of Mr. Lee’s correctional officer certification is **AFFIRMED**.

II. Facts and Procedural History

A. Facts

Mr. Lee was hired by the Alaska Department of Corrections (Department) in October 2013.¹ He graduated from the Department’s Basic Correctional Officer Academy on September

¹ Agency Record, p. 30.

26, 2014.² He then applied for a correctional officer’s certification, which the Council granted on December 11, 2014.³ At all times pertinent to this appeal, Mr. Lee was a correctional officer at the Anchorage Correctional Complex.

Additionally, Mr. Lee was a sergeant with the Guard. The Guard conducted a random drug test on Mr. Lee on March 8, 2015. The test results showed that Mr. Lee had marijuana in his system.⁴

On May 31 and June 12, 2015, Mr. Lee filed sworn statements with the Guard regarding his positive drug test. In those statements, he asserted that he took food from his workplace’s communal refrigerator several days before his drug test, and that, unbeknownst to him, the food contained THC, which led to his positive drug test.⁵ On June 12, 2015, Mr. Lee emailed the Superintendent of the Anchorage Correctional Complex, Jesse Self, notifying him of the positive drug test and that he had signed a sworn statement that he took food “from the fridge in the break room on the east side labeled ‘help yourself’ ... [and] consumed it with out realizing there was THC in it.”⁶ Superintendent Self interviewed Mr. Lee on June 17, 2015 regarding his email. Mr. Lee again stated that he unknowingly consumed food containing THC, which he obtained from the refrigerator located in his workplace’s break room.⁷

The Department held a disciplinary meeting on July 29, 2015.⁸ Mr. Lee, two correctional officer’s union representatives, two lieutenants from the Department, and a human resource’s representative participated in that hearing. During that meeting, Mr. Lee disclosed his initial reporting was inaccurate and that he had actually smoked marijuana during a party on March 6 or 7, 2015.⁹ Mr. Lee was disciplined for his marijuana use and false reporting by a one week suspension from work.¹⁰

B. Procedural History

The Executive Director for the Police Standards Council (Council) filed an accusation, requesting that Mr. Lee’s correctional officer’s certification be revoked for two separate reasons:

² Agency Record, p. 36.

³ Agency Record, pp. 32 – 35.

⁴ Agency Record, p. 45.

⁵ Agency Record, pp. 51 – 54; Sara Hieb’s testimony.

⁶ Agency Record, p. 5; Superintendent Self’s testimony.

⁷ Agency Record, p. 6; Superintendent Self’s testimony.

⁸ Agency Record, p. 7.

⁹ Agency Record, pp. 8 – 10; Richard Chandler’s testimony.

¹⁰ Agency Report, pp. 11 – 12.

(1) his positive marijuana test, and (2) his false report about the circumstances surrounding that test. The Council considered the accusation and revoked Mr. Lee's correctional officer's certificate. Mr. Lee requested a hearing to challenge the revocation.

Mr. Lee's hearing was held on August 15, 2016. Mr. Lee did not appear for the hearing and it was held in his absence.¹¹

III. Discussion

The Executive Director has the burden of proof by a preponderance of the evidence.¹² In order to prevail, the investigator must therefore prove either or both that (a) Mr. Lee consumed marijuana at a time when he was employed as a correctional officer, and (b) lacked the requisite good moral character.

A. Marijuana Consumption

The Alaska regulations governing certifications for correctional officers are clear: the Council is required to revoke a correctional officer's certificate if he or she "has, after hire as a ... correctional ... officer, (A) has used marijuana."¹³

Mr. Lee's March 2015 drug test was positive for THC, the psychoactive component for marijuana. Although Mr. Lee initially denied knowingly consuming marijuana, he subsequently admitted to having smoked it at a party in early March 2015. He was employed as a correctional officer at the time. Mr. Lee's positive drug screen for THC, combined with his admission, show that it is more likely true than not true that Mr. Lee used marijuana after he had been hired as a correctional officer. As a result, the Executive Director has met his burden of proof and the Council is required to revoke Mr. Lee's correctional officer's certification.

B. Good Moral Character/Dishonesty

The Council has the discretion to revoke an officer's certification for lack of good moral character.¹⁴ Good moral character is defined by regulation as "the absence of acts or conduct that would cause a reasonable person to have substantial doubts about an individual's honesty,

¹¹ "If the respondent . . . does not appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence." AS 44.62.530.

¹² AS 44.62.460(e)(1).

¹³ 13 AAC 85.270(b)(2). Although marijuana possession and use within the state of Alaska was legalized by initiative, which was implemented by AS 17.38.010 *et. seq.*, the Council has not changed its regulations regarding the use of marijuana by correctional officers.

¹⁴ 13 AAC 85.210(a)(3); 13 AAC 85.270(a)(3).

fairness, and respect for the rights of others and for the laws of this state and the United States . .

»15

Mr. Lee submitted two separate sworn statements to the Guard saying that he was unwittingly exposed to marijuana through eating food he obtained from his workplace break room. He also made that same statement twice to the Department, once in his email of June 12, 2015, and again in his interview with Superintendent Self on June 17. He then admitted during his July 29 disciplinary meeting that he had actually smoked marijuana on or about March 6, further admitting that he made up the story about unknowingly consuming food which contained marijuana. Mr. Lee's four repetitions, two of which were made under oath, of his story regarding the consumption of food containing marijuana were acts of dishonesty.

The facts are that Mr. Lee knowingly provided four false statements regarding his marijuana exposure. It is notable that two of those statements were made under oath. The Executive Director has therefore shown it is more likely true than not that Mr. Lee's dishonesty in this case "would cause a reasonable person to have substantial doubts about [his] honesty." Dishonest acts alone are sufficient to meet the regulatory definition of a lack of good moral character. This Council has repeatedly revoked both police and correctional officers' certificates for lack of good moral character for lying.¹⁶ Mr. Lee's dishonest statements, both those made in sworn statements to the Guard, and those made during the Department of Correction's official investigation similarly justify the discretionary revocation of Mr. Lee's correctional officer's certification. Although Mr. Lee admitted his voluntary use of marijuana after he had made his prior false statements, his admission does not excuse or mitigate his earlier misconduct, especially in light of the fact that two of those statements were made under oath. Accordingly, the Council exercises its discretion and revokes Mr. Lee's correctional officer's certificate due to a lack of good moral character.

IV. Conclusion

Mr. Lee's correctional officer's certificate is revoked for two separate reasons. First, he used marijuana after he had been hired as a correctional officer. This is a mandatory revocation.

¹⁵ 13 AAC 85.900(7).

¹⁶ See, e.g., *Alaska Police Standards Council v. Parcell*, 348 P.3d. 882 (Alaska 2015) (Affirming the Council's revocation of a police officer's certification due to a lack of good moral character arising in part to evasive statements made during the course of an investigation of his conduct); *Hazelaar v. Alaska Police Standards Council*, Superior Court Case No. 1JU-14-883-CI (Juneau Superior Court, April 6, 2016) (Affirming the Council's revocation of a police officer's certification due to a lack of good moral character arising from evasive/dishonest statements made during the course of an investigation of his conduct).

Second, the Council exercises its discretion to revoke his certificate due to his lack of good moral character, due to his multiple dishonest statements made regarding his marijuana use.

Dated this 24th day of August, 2016.

By: Signed
Lawrence A. Pederson
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 14 day of December, 2016.

By: Signed
Bryce A. Johnson
Chair, Alaska Police Standards Council

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