

**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.

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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.

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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

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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.

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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: 

Stephen C. Slotnick
Administrative Law Judge

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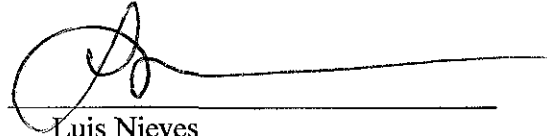
Adoption

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 10 day of March 2016.

By:



Luis Nieves

Vice-Chair, Alaska Police Standards Council

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STATE OF ALASKA

ALASKA POLICE STANDARDS COUNCIL

In the Matter of,)
)
Kevin R. Gilmore,) No. APSC 2014-14
)
Respondent)
_____)

ACCUSATION

Kelly Alzaharna, Executive Director of the Police Standards Council (APSC), Department of Public Safety of the State of Alaska, is seeking to revoke the police certificate of Respondent Kevin R. Gilmore under the legal authority of AS 18.65.240(a) and (c), the Council’s regulations in 13 AAC 85.110, and under the procedures governed by the Administrative Procedure Act in AS 44.62.330, *et. seq.* The Executive Director alleges as follows:

1. On or about February 22, 2008, the Respondent was hired by the Bethel Police Department as a police officer.
2. On or about February 24, 2008, the Respondent started his police officer training at the DPS Training Academy in Sitka, AK.
3. On or about March 11, 2008, the Respondent submitted a memo of resignation to the DPS Training Academy Commander notifying him that he had been released by the Bethel Police Department because of academic performance procedures.
4. On or about March 11, 2008, the Respondent was discharged from his employment as a police officer with the Bethel Police Department due to unsatisfactory performance in academic and practical exercises at the police academy.

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5. On or about May 28, 2011, the Respondent submitted a signed, sworn F-3 Personal History Statement to the North Slope Borough Police Department as part of his application packet for the position of police officer. The Respondent did not disclose that he had been employed by the Bethel Police Department, that he had attended the DPS police academy, that he had been terminated from the Bethel Police Department, or that he had resigned from the DPS police academy.

6. On or about July 11, 2011, the Respondent was hired by the North Slope Borough Police Department as a police officer.

7. On or about October 10, 2011, during a pre-truth verification exam interview, the Respondent checked "yes" to the question "Have you listed every place you have worked in the last 10 years on your current application to the North Slope Borough"? His F-3 Personal History statement did not list his employment with the Bethel Police Department.

8. On or about October 10, 2011, during a pre-truth verification exam interview, the Respondent checked "no" to the question, "Have you ever been fired from a job"?

9. On or about November 21, 2011, during a pre-hire psychological evaluation interview discussion regarding his past employment, the Respondent told the evaluator that "I decided to go to the police academy, and I finished that toward the end of May." He did not disclose that he had been employed by the Bethel Police Department, that he had attended the DPS police academy, that he had been terminated from the Bethel Police Department, or that he had resigned from the DPS police academy.

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2 10. On or about March 1, 2013, the Respondent submitted a signed,
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4 sworn F-7 Application for Certification, dated November 15, 2012, to the Alaska
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6 Police Standards Council (APSC). The Respondent did not disclose that he had been
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8 employed by the Bethel Police Department, that he had attended the DPS police
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10 academy in 2008 and 2011, that he had been terminated from the Bethel Police
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12 Department, or that he had resigned from the DPS police academy in 2008.

13 11. On or about March 6, 2013, the Respondent was certified by APSC as
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15 a police officer in the State of Alaska.

16 12. On or about April 21, 2014, the Respondent resigned from his
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18 employment as a police officer with the North Slope Borough Police Department.

19 13. On or about April 24, 2014, APSC received a call from the DPS
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21 Police Academy staff reporting that a review of the Respondent's F-3 sworn
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23 paperwork dated February 27, 2014, and submitted as part of his application to be
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25 hired as an Alaska State Trooper, showed that the Respondent did not disclose that
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27 he had been employed by the Bethel Police Department, that he had attended the
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29 DPS police academy in 2008, that he had been terminated from the Bethel Police
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31 Department, or that he had resigned from the DPS police academy in 2008.

32 14. On or about July 2014, the Respondent told Executive Director
Alzaharna that he was never employed by the Bethel Police Department as a police
officer. He said that he'd gone straight to the police academy, didn't have any
paperwork, and wasn't paid for his time at the academy.

 15. On or about August 11, 2014, the Respondent told Executive Director
Alzaharna that he'd forgotten to list his previous employment with Bethel PD on his
F-3 for employment with the Alaska State Troopers. The Respondent did not

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2 disclose that he also omitted this information from his F-3 Personal History
3 Statement for employment with the North Slope Borough PD and the Juneau PD (on
4 or about May 27, 2014).
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6 16. AS 18.65.240(c) provides that the APSC may deny or revoke the
7 certificate of a police officer who does not meet the standards adopted under (a) (2)
8 of this section.
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10 17. 13 AAC 85.110(a)(1) provides that the council will, in its discretion,
11 revoke a basic, intermediate, or advanced certificate upon a finding that the holder of
12 the certificate falsified or omitted information required to be provided on an
13 application for certification at any level, or in supporting documents.
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15 18. 13 AAC 85.110(a)(3) provides that the council will, in its discretion
16 revoke a basic, intermediate, or advanced certificate upon a finding that the holder of
17 the certificate does not meet the standards in 13 AAC 85.010(a) or (b).
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23 COUNT I

24 Paragraphs 1-18 are incorporated by reference. Based upon the facts
25 described above, the Respondent omitted information required to be provided on an
26 application for certification and/or the supporting documents, which is grounds for
27 discretionary revocation under 13 AAC 85.110(a)(1).
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30 COUNT II

31 Paragraphs 1-18 are incorporated by reference. Based upon the facts
32 described above, the Respondent does not meet the minimum standards for a
certified police officer established under 13 AAC 85.010(a) (3). The Respondent is

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dishonest and lacks good moral character, which is grounds for discretionary revocation under 13 AAC 85.110(a) (3).

DATED this 13th day of July, 2015 at Juneau, Alaska.

Kelly C. Alzaharna
Kelly Alzaharna, Executive Director
Alaska Police Standards Council

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