

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

CAROLYN MONROE,
Petitioner,

v.

GEORGIA PEACE OFFICER
STANDARDS AND TRAINING
COUNCIL,

Respondent.



Docket No.:
OSAH-POST-CERT-1712780-70-Malihi

JAN 05 2017


Kevin Westray, Legal Assistant

**INITIAL DECISION
ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DETERMINATION**

I. SUMMARY OF PROCEEDINGS

Petitioner Carolyn Monroe appeals from the decision of the Georgia Peace Officer Standards and Training Council ("POST" or "Respondent") to revoke her peace officer certification based upon alleged violations of O.C.G.A. § 35-8-7.1.

On October 27, 2016, Respondent filed a motion for summary determination. Petitioner did not file a response.¹ After consideration of the arguments and submissions, and for the reasons stated below, the Court finds that Respondent properly revoked Petitioner's peace officer certification. Accordingly, Respondent's motion for summary determination is **GRANTED**, and its decision to revoke Petitioner's certification is **AFFIRMED**.

II. STANDARD ON SUMMARY DETERMINATION

Summary determination in this proceeding is governed by Rule 15 of the Office of State Administrative Hearings, which provides, in relevant part:

¹ The deadline for Petitioner to file and serve a response was November 16, 2016. See Ga. Comp. R. & Regs. 616-1-2-.15(2). The Court reminded Petitioner of this deadline in its Order issued November 1, which continued the evidentiary hearing pending the ruling on the motion for summary determination. The Court waited an additional two weeks to hear from Petitioner, before finally closing the record on November 30, 2016.

A party may move, based on supporting affidavits or other probative evidence, for summary determination in its favor on any of the issues being adjudicated on the basis that there is no genuine issue of material fact for determination.

Ga. Comp. R. & Regs. 616-1-2-.15(1). On a motion for summary judgment, the moving party must demonstrate that there is no genuine issue of material fact such that the moving party "is entitled to a judgment as a matter of law on the fact established." Pirkle v. Env'tl. Prot. Div., Dep't of Natural Res., OSAH-BNR-DS-0417001-58-Walker-Russell, 2004 Ga. ENV. LEXIS 73, at *6-7 (OSAH 2004) (citing Porter v. Felker, 261 Ga. 421 (1991)); see generally Piedmont Healthcare, Inc. v. Ga. Dep't of Human Res., 282 Ga. App. 302, 304-05 (2006) (noting that a summary determination is "similar to a summary judgment" and elaborating that an administrative law judge "is not required to hold a hearing" on issues properly resolved by summary determination).

Further, pursuant to Rule 15:

When a motion for summary determination is supported as provided in this Rule, a party opposing the motion may not rest upon mere allegations or denials, but must show, by affidavit or other probative evidence, that there is a genuine issue of material fact for determination.

Ga. Comp. R. & Regs. 616-1-2-.15(3). See Lockhart v. Dir. Env'tl. Prot. Div., Dep't of Natural Res., OSAH-BNR-AE-0724829-33-RW, 2007 Ga. ENV. LEXIS 15, at *3 (OSAH 2007) (citing Leonaitis v. State Farm Mut. Auto Ins. Co., 186 Ga. App. 854 (1988)).

Should all the factual issues in this case be decided by summary determination, the administrative law judge shall issue an Initial Decision. Ga. Comp. R. & Regs. 616-1-2-.15(7); see also O.C.G.A. §§ 35-8-7.2, 50-13-41(d).

III. FINDINGS OF UNDISPUTED MATERIAL FACT

Petitioner has failed to demonstrate, by affidavit or other probative evidence, that a genuine issue of material fact exists.² Ga. Comp. R. & Regs. 616-1-2-.15(3); Ellis v. England, 432 F.3d 1321, 1325-26 (11th Cir. 2005). Consequently, the Court has accepted Respondent's well-supported and legally sufficient statement of undisputed facts, as follows:

1.

Petitioner became employed by the Georgia Department of Corrections ("GDC" or "Department") as a correctional officer at Hancock State Prison on June 18, 2012. (Respondent's Exhibit A).

2.

Petitioner acknowledged that, as a condition of her employment with the GDC, she must abide by the terms and conditions of the GDC's procedure governing employee standards of conduct. (Respondent's Exhibit C).

3.

The GDC's procedure governing employee standards of conduct is set forth in its Standard Operating Procedure ("SOP") IVO14-001. (Respondent's Exhibit D).

4.

Pursuant to SOP IV014-001, GDC employees are prohibited from engaging in personal dealings with inmates. Personal dealings are defined, *inter alia*, as "any unofficial personal transactions, dealings, relationships or contacts . . . with an offender that have not been properly approved in writing by the appropriate Division Director or Designee." (Respondent's Exhibit D, pp. 5-6).

² In its Order dated November 1, 2016, the Court cautioned Petitioner that she "must produce probative evidence, by affidavit or otherwise, showing that a genuine issue of material fact exists," in accordance with Ga. Comp. R. & Regs. 616-1-2-.15(3).

5.

On December 7, 2013, Petitioner allowed an inmate housed in I-Building at Hancock State Prison to perform an unauthorized cosmetic service on her by having the inmate arch her eyebrows. (Respondent's Exhibits B, F).

6.

SOP IV014-001 provides further that GDC employees "shall acquaint themselves with and comply with . . . the Department's procedures and the procedures of the unit to which they are assigned." (Respondent's Exhibit D, p. 8).

7.

On December 7, 2013, Petitioner was assigned to a security post in H-building at Hancock State Prison. (Respondent's Exhibit B).

8.

The post orders for H-Building require officers assigned to posts in H-Building "[to] be properly relieved by another officer or instructed by [their] supervisor before leaving [their] assigned post for any reason." (Respondent's Exhibit E).

9.

On December 7, 2013, Petitioner abandoned her assigned post in H-Building without proper relief or her supervising officer's approval, in order to have an inmate perform unauthorized cosmetic services on her in I-Building. (Respondent's Exhibits B, F).

10.

The GDC conducted an internal investigation, wherein Petitioner admitted that she abandoned her assigned post to have an inmate engage in unauthorized dealings on December 7, 2013. (Respondent's Exhibits B, F, J).

11.

Petitioner was terminated by the GDC on December 12, 2013. The grounds for termination were listed as “unprofessional conduct, post abandonment and personal dealing,” in violation of SOP IV014-001. (Respondent’s Exhibit G).

12.

As a result of the conduct disclosed in the GDC’s investigation and of Petitioner’s subsequent termination, P.O.S.T. recommended that her peace officer certification be revoked. Petitioner appealed the recommendation. (Respondent’s Exhibits H, I).

IV. CONCLUSIONS OF LAW

1.

This matter concerns the proposed revocation of a state-issued license or certification. Therefore, Respondent has the burden of proof. Ga. Comp. R. & Regs. 616-1-2-.07(1). The standard of proof is the preponderance of evidence standard. Ga. Comp. R. & Regs. 616-1-2-.21(4).

2.

P.O.S.T. has the authority to take disciplinary action against the certification of a peace officer upon a determination that the officer has, *inter alia*, engaged in any unprofessional practice or practice harmful to the public; violated a rule that related to the regulation of the officer; committed an act indicative of bad moral character or untrustworthiness; or is otherwise discharged from employment for disciplinary reasons. O.C.G.A. § 35-8-7.1(a)(6), (7), (8), (11).

Unprofessional Conduct

3.

A certified peace officer may be disciplined upon a finding that she has “[e]ngaged in any unprofessional, unethical, deceptive, or deleterious conduct or practice harmful to the public[.]” O.C.G.A. § 35-8-7.1(a)(6). Acts of unprofessional conduct include “any departure from, or failure to conform to, the minimal standards of acceptable and prevailing practice of an officer[.]” Id.; see also Ga. Comp. R. & Regs. 464-2-.01(r).

4.

Here, the undisputed facts show that Petitioner abandoned her security post on December 7, 2013. As a correctional officer assigned to the prison’s H-Building, Petitioner was required to be on duty at her post until such time as she was properly relieved or otherwise instructed by her supervisor to leave. However, Petitioner admittedly left her assigned post without obtaining relief or proper authorization. Moreover, Petitioner abandoned her post—and created a security risk—solely for the purpose of engaging an inmate in an unauthorized cosmetic service, which constituted a prohibited “personal dealing” with an inmate. Petitioner’s actions thus constituted unprofessional conduct in violation of O.C.G.A. § 35-8-7.1(a)(6), as they placed fellow officers, inmates, and the public at risk.

Violation of Laws, Rules, or Regulations

5.

Disciplinary action also may be taken against a peace officer’s certification if the officer [v]iolated or attempted to violate a law, rule, or regulation of this state, any other state, [P.O.S.T.], the United States, or any other lawful authority without regard to whether the violation is criminally punishable, so long as such law, rule, or regulation relates to or in part regulates the practice of an officer[.]

O.C.G.A. § 35-8-7.1(a)(7). Furthermore all GDC personnel “shall be required to adhere to applicable rules, regulations, policies, procedures and directives published by the [GDC] and local implementing procedures promulgated in consonance therewith.” Ga. Comp. R. & Regs. 125-2-1-.01(d).

6.

In this case, Petitioner’s conduct was in direct violation of SOP IV014-001, which governed her conduct as a GDC officer. As noted above, the standards of conduct in SOP IV014-001 explicitly prohibit personal dealings between officers and inmates, unless written approval is obtained. Petitioner violated this standard of conduct when she had an inmate perform an unauthorized cosmetic service and arch her eyebrows. Likewise, SOP IV014-001 required Petitioner to familiarize herself with the specific post orders governing her work assignment at H-Building. These post orders, in turn, explicitly require officers to man their assigned posts until they are properly relieved or otherwise are authorized to leave their post by their supervisor. By abandoning her post assignment without authorization or proper relief, Petitioner ignored the post orders and, consequently, disobeyed SOP IV014-001. As a result of these violations to the standards of conduct, Petitioner violated GDC Rule 125-2-1-.01(d) and O.C.G.A. § 35-8-7.1(a)(7).

Bad Moral Character or Untrustworthiness

7.

Additionally, sanctions may be issued when an officer has “[c]ommitted any act or omission which is indicative of bad moral character or untrustworthiness[.]” O.C.G.A. § 35-8-7.1(a)(8). Here, Petitioner’s abandonment of her post for the sole purpose of engaging in a prohibited “personal dealing” with an inmate demonstrated a lack of concern for the risks arising

from such misconduct. As such, she has shown that she cannot be trusted to comply with the rules and regulations governing an officer's conduct, and therefore has violated O.C.G.A. § 35-8-7.1(a)(8).

Discharge for Disciplinary Reasons

8.

Lastly, P.O.S.T. has the authority to sanction an officer's certification when she has "[b]een suspended or discharged by the officer's employing law enforcement unit for disciplinary reasons." O.C.G.A. § 35-8-7.1(a)(11). As the Petitioner was terminated by the GDC for violations of its standards of conduct, disciplinary action is warranted under this statutory provision.

Sanction

9.

Georgia Code Section 35-8-7.1(b)(1) authorizes P.O.S.T. to take one or more of several listed actions when it is determined that a certified peace officer should be disciplined. In particular, P.O.S.T. may administer a public or private reprimand; suspend any certificate for a definite period; limit or restrict any certificate; revoke any certificate; or condition the penalty, or withhold formal disposition, upon the officer's completing such care, counseling, or treatment as directed by P.O.S.T. O.C.G.A. § 35-8-7.1(b)(1).

10.

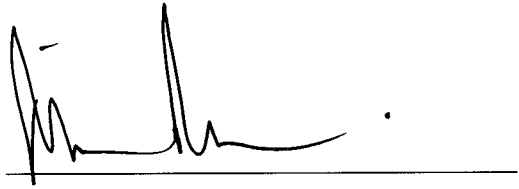
In this instance, Petitioner's abandonment of her security post violated the GDC's standards of conduct and placed her fellow officers, the inmates, and the public in danger. The fact that she left her post in pursuit of a prohibited personal dealing with an inmate further

underscores a degree of untrustworthiness that is unacceptable in a certified jail officer. As such, her behavior warrants revocation of her certificate.

V. DECISION

For the foregoing reasons, Respondent's motion for summary determination is **GRANTED**, and the decision to revoke Petitioner's certificate is hereby **AFFIRMED**.

SO ORDERED this 5th day of January, 2016.

A handwritten signature in black ink, appearing to read 'Michael Malihi', is written above a horizontal line. The signature is stylized with a prominent vertical stroke on the left and a smaller one on the right.

MICHAEL MALIHI, Judge