

**BEFORE THE KANSAS COMMISSION ON PEACE OFFICERS'
STANDARDS AND TRAINING**

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In the Matter of)		
)		
BRYCE STEIN)	Case No.	2016-0151
Certification No. 21408 26134)		
)		

ORDER

Denying Petition for Reinstatement

On October 5, 2022 the above-referenced matter comes before the Kansas Commission on Peace Officers' Standards and Training (Commission) for consideration on the Petition for Reinstatement of Law Enforcement Certification filed by Bryce Stein (Petitioner). Under the Kansas Administrative Procedure Act, the Commission has delegated its authority to serve as the Presiding Officer in the above-referenced matter to the Hearing Panel, which is comprised of the following Commissioners: Kirk D. Thompson, Director of the Kansas Bureau of Investigation; Herman Jones, Superintendent of the Kansas Highway Patrol; and Don Scheibler, Chief of the Hays Police Department.

Bryce Stein (Stein) appeared in person, pro se. The Commission was represented by Michelle Meier, Special Assistant Attorney General who serves as its litigation counsel. Also present was Laine Barnard, Assistant Attorney General who serves as legal counsel to the Hearing Panel in this matter.

The proceedings were conducted in accordance with the Kansas administrative procedure act. Stein was advised of his right to an attorney and indicated he wished to proceed pro se. Stein was advised of his right to present evidence, present witnesses and admit exhibits. All witnesses were sworn prior to testifying.

After taking administrative notice of its records and considering the evidence and arguments presented at the hearing, the Commission denies the Petition for Reinstatement based upon the findings and conclusions below.

Findings of Fact

1. In July 2011, the Commission issued a law enforcement certification to Stein. He was employed as a full-time police officer with the Dodge City Police

Department until June 1, 2016.

2. On April 16, 2016, Stein drank several alcoholic drinks prior to attending a football game where he drank a few beers. Shortly after midnight, Stein went to a bar, consumed five alcoholic beverages and two double alcoholic beverages. He left the bar shortly after 2:15 a.m. and drove his vehicle, hitting two parked cars. Stein left his disabled vehicle and fled on foot without notifying or attempting to notify the owners of the two damaged cars. At about 2:30 a.m., Stein called his brother on his cell phone and asked his brother to pick him up, which his brother did.

3. On April 17, 2016, at about 4:45 a.m., Stein spoke with Master Deputy Russell Fleming of the Ford County Sheriff's Office who was investigating the accident. Stein told Deputy Fleming he had gone to a party in Dodge City but he did not know the location of the party and could not identify who invited him or who attended the party. Stein also said his cell phone died while he was at the party. Stein denied leaving the scene of an accident. He told Deputy Fleming he did not drink anything after leaving the bar, his brother gave him a ride home, he did not know his vehicle had been involved in a crash, and claimed the key fob for his vehicle was missing. Deputy Fleming terminated the interview due to Stein's intoxication.

4. Deputy Fleming interviewed Stein again in the evening of April 17, 2016. Stein admitted he was very intoxicated while at the bar. He left the bar and drove to a party but did not know the location of the party, who attended the party, or what happened to his vehicle. Stein said he could not have been driving his vehicle and he would not have fled the scene of an accident. Stein was not able to tell Deputy Fleming where his brother met him or if he walked to his brother's home. Stein claimed he could not use his cell phone because it was dead. When he returned home, Stein charged his cell phone and saw he had several missed calls. He returned Deputy Fleming's call at 4:18 a.m.

5. Stein was later interviewed by Lieutenant Brooks with the Internal Affairs Division of the Dodge City Police Department. Stein told Lieutenant Brooks the night of the accident was blurry. He remembered leaving the bar, going to a house party, and being in a garage. He later learned the address of the house when he encountered a man who had also been at the party. However, Stein could not remember who invited him or who attended the party. Stein left the house and got a ride to his brother's house, but he could not remember who gave him the ride. Stein's brother then drove him home. Stein said he did not know what happened to his vehicle but assumed it was taken as his key fob was missing.

6. Video surveillance at the bar showed Stein leaving the bar alone at 1:49 a.m. He then sat in his vehicle for approximately 20 to 25 minutes. His vehicle left the parking lot at the bar and proceeded north on the street where the crash occurred. Deputy Fleming obtained a search warrant for Stein's cell phone records. Stein made four phone calls to his brother on April 17, 2017, between 1:01 a.m. and 2:43 a.m., indicating his cell phone was functioning before and after the crash.

7. Subsequently, criminal charges were brought against Stein, including the misdemeanor offense of interference with law enforcement. On September 26, 2016, Stein entered into a diversion agreement on all of the charges. Stein stipulated in the diversion agreement that he made the following false statements to Deputy Fleming: he had been to a party at a house and his cell phone did not work while he was at the party. Stein admitted he had not gone to a party at a house and his cell phone was not dead but had sent and received multiple calls during the time period in question.

8. On January 11, 2016, Jackie Stewart, an investigator for the Commission, interviewed Stein. Stein told Investigator Stewart he had been drinking alcohol at a football game. Afterwards, he went to his in-laws' house and then to a bar. Stein said he was intoxicated when he left the bar and the events were a blur. Stein did not recall crashing his vehicle or leaving his vehicle in the street. When he met with Deputy Fleming, Stein said he was in denial about the incident and Deputy Fleming stopped the interview due to Stein's intoxication.

9. During his interview with Investigator Stewart, Stein acknowledged he had told Deputy Fleming that he had not driven under the influence or left the scene of accident. Stein also acknowledged he had told Deputy Fleming that his key fob was missing, his cell phone had died that night, he had to charge his cell phone when he returned home, and he saw multiple missed calls on his cell phone after charging his cellphone at home. Stein admitted he had lied to Deputy Fleming as the phone records showed he made multiple calls between the time of the accident and returning home. Stein told investigator Stewart he lied to Deputy Fleming because he was scared of the consequences to his job. Stein admitted he had stipulated to being guilty of impeding Deputy Fleming's investigation.

10. Stein also admitted to Investigator Stewart he had lied to Lieutenant Brooks when she was conducting her investigation for internal affairs. He told Lieutenant Brooks he had been at a party, he recalled being in a garage, his vehicle was gone when he went to leave the party, and the key fob for his vehicle was missing. Stein told Investigator Stewart these statements to Lieutenant Brooks were lies. Stein claimed he did not remember what happened to his vehicle and his brother gave him a ride home.

11. On April 6, 2017, the Commission's Investigative Committee served Stein with a Summary Proceeding Order. The Investigative Committee's order concluded that Stein had violated the Kansas Law Enforcement Training Act (KLETA) and revoked his certification as a law enforcement officer. Stein filed a timely request for a hearing.

12. At the June 29, 2017 hearing, Stein admitted he was intoxicated when he left the bar and hit the other cars; he ran because he was afraid he would lose his job. Stein admitted he lied to Deputy Fleming and Lieutenant Brooks during their investigations. Because he had lied to Deputy Fleming during the first interview, Stein

believed he had to maintain his lies during the second interview. Stein regretted his actions on the night of the accident because they tarnished the image of fellow law enforcement officers and hurt the public trust in law enforcement.

13. In March 2017, Stein completed a three-month outpatient treatment and other counseling sessions with Compass Behavioral Health and Catholic Charities in Dodge City. The terms of his one-year diversion agreement required this treatment, that he abstain from consuming alcohol and submit to random drug and alcohol tests.

14. Stein's March 2, 2017 discharge summary from Catholic Charities of Southwest Kansas recommended "Bryce needs to continue to live in lower stress environment and alcohol free lifestyle. His family genetic history contains the disease of alcoholism which puts him at high risk for developing the disease himself. His family also has diabetes which can alter the way he metabolized alcohol due to the high sugar content in the alcohol. He can always reenter counseling at Catholic Charities and Compass."

15. On July 11, 2017 the Hearing Panel, after consideration of all the evidence presented, issued an Order revoking Stein's law enforcement certification.

16. On July 11, 2022, Petitioner filed a Petition for Reinstatement, which is currently before the panel. In his Petition, he stated he has become a "better person, father, husband, and employee". Petitioner further states he has matured in the five years since his revocation and has accepted all the responsibilities of his action and regrets what he did and knows now not to take anything for granted. After resigning from the Dodge City Police Department, Stein began classes to qualify as an emergency medical technician (EMT) and became a volunteer firefighter. For the past five years Stein has been employed as a full time EMT/Firefighter with the Ford County Fire and EMS. Stein believes he has shown he has good moral character and that he can be trusted and relied upon by his community and peers.

17. Rob Boyd (Boyd) is the Chief of the Ford County Fire and EMS. Chief Boyd has known Stein his entire life and has watched him grow personally and professionally over the years. In a letter dated July 14, 2022, Boyd describes Stein as being a model employee who is dedicated to his profession and goes above and beyond expectations. Boyd indicates in his letter that Stein applied for, and was offered, an investigator position with the department and requests the Commission consider reinstating Stein's law enforcement certification.

18. Stein provided several professional references from colleagues at the Ford County Fire and EMS and other professional references requesting the Commission consider reinstating Stein's law enforcement certification.

19. Commission Investigator George Brown (Brown) was assigned to investigate Stein's Petition for Reinstatement. Upon Brown's initial review of the Petition, Brown noted Stein focused on himself, not on the impact his actions had on the community as a whole. As part of his investigation, Investigator Brown interviewed Stein, Boyd and Steven Strain, Chief of the Spearville Police Department and Colleen Brooks (Brooks), the Dodge City Internal Affairs Lieutenant who interviewed Stein in 2017.

20. Brooks advised Brown she now could look past Petitioner's conduct of driving under the influence. However, she stated the interference charge was still an issue for her, that she would have a problem working with Stein, that she does not trust him.

21. Chief Strain advised Brown he had known Stein since high school and has not had any issues with Stein in his law enforcement capacity. Strain described Stein's volunteer efforts and involvement with his children's lives and activities. When Brown asked Strain if he was aware of the criminal inference charge and the circumstances that led to the charge, Strain advised he was not. Brown asked Strain if he would hire Stein and Strain responded he would not due to the likely Brady-Giglio issues.

22. Investigator Brown also contacted the Kansas State Fire Marshall who issues fire investigator certifications. Brown inquired about the role of a certified fire investigator as was told an investigator would typically testify as an expert witness. Brown asked if the Fire Marshall would grant a certification if an applicant had a likely Brady-Giglio issue and was told they would not and further noted they have revoked a certification when an investigator had a Brady-Giglio issue arise.

Conclusions of Law

23. K.S.A. 74-5616(b)(1) authorizes the Commission to suspend or revoke the certification of a law enforcement officer who fails to maintain the requirements of K.S.A. 74-5605 and amendments thereto.

24. K.S.A. 74-5605(b)(7) requires a law enforcement officer to "be free of any physical or mental condition which adversely affects the ability to perform the essential functions of a police officer or law enforcement officer with reasonable skill, safety and judgment."

25. K.S.A. 74-5622(b)(1) allows a person whose certification has been revoked to petition the commission to reinstate the certificate after the expiration of five years from the effective date of such revocation.

26. K.S.A. 74-5622(b)(2) authorizes the commission to reinstate a revoked certificate upon a finding that the petitioner is otherwise qualified for certification under the Kansas law enforcement training act and is sufficiently rehabilitated to warrant the public trust. The burden shall be upon the petitioner to establish rehabilitation by clear and convincing evidence.

27. K.S.A. 74-5622(b)(3) In determining whether a petitioner is sufficiently rehabilitated to warrant the public trust, the commission may consider any relevant evidence, and may, but shall not be required, to consider the following factors:

(A) The present moral fitness of the petitioner for performance of duties as a police officer or law enforcement officer;

(B) the demonstrated consciousness of the wrongful conduct and disrepute which the conduct has brought upon the law enforcement profession and the administration of justice;

(C) the extent of the petitioner's rehabilitation;

(D) the nature and seriousness of the original misconduct;

(E) the conduct subsequent to discipline;

(F) the time elapsed since the original discipline; and

(G) the petitioner's character, maturity and experience at the time of the original revocation.

28. The considerations in K.S.A. 74-5622(3) were initially set forth by the Kansas Supreme Court in *Vakas v. Kansas Bd. of Healing Arts*, 248 Kan. 589, 600 (1991) and *State v. Russo*, 230 Kan. 5, 9 (1981). The Court explained "[t]he objective in determining whether to reinstate a license is the same objective in determining whether to grant a license initially – to exclude incompetent or unscrupulous persons from being licensed to practice [in the profession]." 248 Kan. at 602; 230 Kan. at 9.

29. The requirements for initial certification as a police officer are set forth in K.S.A. 74-5605(b). One of those requirements is the applicant must "be of good moral character sufficient to warrant the public trust in the applicant as a police officer or law enforcement officer." K.S.A. 74-5605(b)(5). This is consistent with K.S.A. 74-5622(3)(A) for reinstatement of a certification. Thus, whether the Commission is considering initial certification or reinstatement of certification, a critical requirement is the person's moral fitness for performance as a police officer or law enforcement officer.

30. Upon seeking reinstatement, the petitioner has an even greater burden than when initially granted a license because the petitioner must overcome the prior finding as to fitness to practice in the licensed profession. 248 Kan. at 608. In a case involving reinstatement to practice as an attorney, the reason for this greater burden was explained as follows:

Woven throughout our disciplinary cases involving attorneys is the thought that they occupy a special position because they are actively involved in administering the legal system whose ultimate goal is the even-handed administration of justice. Integrity and honor are critical components of a lawyer's character as are a sense of duty and fairness. Because the legal system embraces the whole of society, the public has a vital expectation that it will be properly administered. From this expectancy arises the concept of preserving public confidence in the administration of justice by disciplining those lawyers who fail to conform to professional standards. *Russo*, 230 Kan. 10. (Quoting *In re Brown*, 166 W.Va. 227, 232-33 [1980].)

The above rationale applies equally to law enforcement officers. Like attorneys, law enforcement officers occupy a special position because they are also actively involved in the legal system—for example, responding to calls for assistance; detecting, recording, and reporting crimes; filing sworn statements to obtain warrants and initiate criminal

proceedings; and testifying truthfully at court proceedings. Thus, we review the above factors, albeit out of sequence, to determine whether Petitioner has been sufficiently rehabilitated so that he can now conform to the professional standards of a law enforcement officer.

31. Paragraph numbers 1 through 22 above are hereby incorporated by reference.

K.S.A. 74-5622 (F): Time Elapsed Since the Original Discipline

32. Five years have elapsed between the revocation of Petitioner's certification as a law enforcement officer and his Petition for Reinstatement. The mere passage of time alone is not sufficient to warrant reinstatement. Rather, time provides a petitioner an opportunity to become rehabilitated—to build a record of good character and integrity. A lengthy waiting period between revocation and a petition for reinstatement where the petitioner's conduct was exemplary reinforces a claim of rehabilitation. 166 W.Va. at 235. In other words, the crucial issue is what conduct since the revocation of Petitioner's certification supports his claim of rehabilitation.

33. Petitioner states "this process has made me a better person, father, husband, and employee". He further states "I have matured over the last 5 years, and have accepted all responsibilities of my actions and regret what I have done". However, Petitioner failed to provide any direct evidence to indicate the extent of any counseling or efforts towards personal development and growth. It appears the only treatment and counseling Petitioner received was in 2017 as a result of his criminal conduct and required as part of his diversion agreement.

K.S.A. 74-5622 (D): Nature and Seriousness of the Original Misconduct

34. The next consideration is the nature and seriousness of the original misconduct. As discussed above, Petitioner made numerous intentional false representations to various law enforcement officers. First, he made false statements to Deputy Fleming during two separate interviews. Next, he made numerous false statement to Dodge City Lieutenant Brooks. All of Petitioner's intentional false statements were made for his own personal benefit, to hide his criminal conduct and avoid negative employment consequences.

35. Petitioner's false representations caused multiple officers to spend law enforcement time and resources to investigate his conduct that would have been easily avoided if he had simply been truthful. His conduct resulted in the necessity of the retrieval of the bar's video footage and a search warrant for his cell phone data. His conduct shows a lack of honesty, trustworthiness, fairness, integrity, sense of duty, and respect for the rights of others—specifically, the rights of the Department, fellow law enforcement officers, and the public. These are critical traits that a law enforcement officer must possess to maintain the trust of his supervisors and other law enforcement officers and to preserve public confidence in the administration of justice.

36. The Commission determines that Petitioner's original misconduct was serious because it involved multiple intentional false misrepresentations to multiple people for personal benefit. Petitioner's conduct also resulted in criminal charges. This type of conduct erodes the public's trust in law enforcement officers and confidence in the administration of justice.

K.S.A. 74-5622 (B) Demonstrated Consciousness of the Wrongful Conduct and Disrepute Which the Conduct Has Brought Upon the Law Enforcement Profession and the Administration of Justice

37. Petitioner states in his Petition for Reinstatement "this process has made me a better person, father, husband, and employee". He further states "I have matured over the last 5 years, and have accepted all responsibilities of my actions and regret what I have done" but fails to comprehend the ongoing impact his conduct would have if reinstated. In each case he was involved in, his conduct leading to the revocation of his certification would be disclosed under Brady-Giglio¹ case law. Petitioner's wrongful conduct would be highlighted time and time again, bringing disrepute on the law enforcement profession. Additionally, victims and the administration of justice as a whole would be likely be impacted as his credibility is questioned in every case he is involved.

38. Based upon the above, the Commission finds that Petitioner has not demonstrated a consciousness of his wrongful conduct and the disrepute that his conduct brought upon the law enforcement profession and the administration of justice.

K.S.A. 74-5622 (C): Extent of Petitioner's Rehabilitation

39. The last factor for consideration is the extent of Petitioner's rehabilitation. Petitioner received education and training to become an EMT and firefighter and has been employed in that capacity for the last 5 years. Petitioner describes himself as a better person, father, husband and employee. He states he has matured in the last five years and accepts responsibility for his actions. While these are all positive considerations, they must be weighed with other considerations.

40. Petitioner admitted five letters of reference. All indicate an awareness that Petitioner's certification is revoked however, none specifically describe knowledge of the events that led to his revocation.

¹In *Brady v. Maryland*, 373 US 83, 87, 83 S Ct 1194, 10 L Ed 2d 215 (1963), the United States Supreme Court held that due process requires the prosecution to disclose evidence favorable to the accused, where such evidence is material to guilt or punishment. "[S]uppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Id.* This rule is followed in Kansas, see *State v. Warrior*, 294 Kan. 484, 505-06, 277 P.3d 1111, 1127 (2012). *Giglio v. United States*, 405 U.S. 150, 155, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972), extended the scope of Brady to include relevant impeachment evidence. As the Court explained in *United States v. Bagley*, 473 U.S. 667, 678, 105 S. Ct. 3375, 87 L. Ed. 2d 481 (1985), "[i]mpeachment evidence . . . falls within the Brady rule" (citing *Giglio*, 405 US at 154). The disclosure obligation under Brady includes evidence that could be used to impeach the credibility of a witness.

41. Investigator Brown contacted Chief Stain, an author of one of the Petitioner's letters. Stain advised Brown he was unaware of Petitioner's conduct that led to the interference charge. Stain further advised, with that knowledge, he would not hire Petitioner as a law enforcement officer.

42. Petitioner has failed to provide any detailed information to substantiate any claim of rehabilitation. Such evidence assists in the determination of whether Petitioner has recouped the moral fitness for performance of duties as a law enforcement officer (such as the character traits of honesty, integrity, sense of duty, and fairness), thereby preserving public trust in law enforcement officers and confidence in the administration of justice. Without such evidence, it is difficult, if not impossible, to evaluate the extent, if any, of Petitioner's rehabilitation and weigh it against the evidence that Petitioner has not been rehabilitated.

K.S.A. 74-5622 (G): Character, Maturity and Experience When Certification Revoked

43. Factor (G) requires review of Petitioner's character, maturity and experience at the time that his certification was revoked. On April 16, 2016 Petitioner was 26 years old and had been certified as a police officer for approximately five years; as such, his conduct was not due to immaturity or inexperience.

44. Honesty and integrity are character traits that are learned and practiced long before adulthood. A person must possess those traits at the time of certification as a law enforcement officer and retain those traits to conform to the professional standards of a law enforcement officer. If Petitioner possessed the character traits of honesty and integrity in 2016, he would not have made the numerous false statements to the Department so that he could obtain a personal benefit.

45. Based upon the above, the Commission determines that at the time of revocation Petitioner lacked maturity and the character that a law enforcement officer must possess—honesty, trustworthiness, fairness, integrity, and respect for the rights of others.

Order

WHEREFORE, after consideration of the above findings of facts and conclusions of law, it is the decision and order of the Commission that Stein's Petition for Reinstatement be denied.

IT IS SO ORDERED.

E.A. Smith by Herman Jones

Herman Jones, Commissioner
As designated by and on behalf of the
Kansas Commission on Peace Officers'
Standards and Training

NOTICE OF ADMINISTRATIVE RELIEF

The above Order reinstating the certification as a law enforcement officer issued to Joshua Blanding is a final order. Pursuant to K.S.A. 2022 Supp. 77-529, a party may file with the Commission a petition for reconsideration within 15 days from the date noted below in the Certificate of Service. Such petition must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking judicial review.

Pursuant to K.S.A. 2022 Supp. 77-528, a party may file, if applicable, a petition for stay of effectiveness of the order prior to the expiration of the time in which to file a petition for judicial review. The filing of a petition for a stay of effectiveness is not a prerequisite for seeking judicial review.

NOTICE OF JUDICIAL RELIEF

If a petition for reconsideration is not filed, a party may file within 30 days from the date noted below in the Certificate of Service a petition for judicial review with the appropriate district court as provided in the Kansas Judicial Review Act, K.S.A. 77-601 *et seq.*

The person who may receive service of a petition for reconsideration, a petition for stay of effectiveness, or a petition for judicial review on behalf of the Commission is: Doug Schroeder, Executive Director of KS-CPOST, 1999 N. Amidon, Suite 350, Wichita, KS 67203.

CERTIFICATE OF SERVICE

This is to certify that on this 12th day of December, 2022, a copy of the above Order and Notices were deposited in the United States mail, first-class postage prepaid, and addressed to:

Bryce Stein



I further certify that on the same day a copy of the above Order and Notices were personally delivered to:

Michelle R. Meier
Special Assistant Attorney General
Kansas Commission on Peace
Officers' Standards and Training
1999 N. Amidon, Suite 350
Wichita, KS 67203

A handwritten signature in blue ink, appearing to read "GA Smith", is written over a horizontal line.

Staff
Kansas Commission on Peace Officers'
Standards and Training