

KANSAS COMMISSION ON PEACE OFFICERS' STANDARDS & TRAINING

1999 N Amidon Ste. 350

Wichita, KS 67203

In the Matter

of

DONIELLE WATSON

21215

Case No. 2023-0021

ORDER

Now on January 18, 2024, the above-referenced matter comes for hearing by the Kansas Commission on Peace Officers' Standards and Training (Commission) regarding the law enforcement certification of Donielle Watson. Pursuant to 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: Roger Soldan, Sheriff of Saline County, Jody Prothe, Major, Johnson County Sheriff's Office, and Sherri Schuck, Pottawatomie County Attorney.

Donielle Watson appeared in person and with counsel, Donald R. Aubry. The Commission was represented by its litigation counsel, Special Assistant Attorney General Michelle Meier. Also present was Jay Rodriguez, Assistant Attorney General, serving as legal counsel to the Hearing Panel, who conducted the hearing at the direction of the Hearing Panel.

Based upon its records and the evidence presented at the hearing, the Commission makes the following findings of fact, conclusions of law, and orders.

FINDINGS OF FACT

Procedural History

1. Donielle Watson (Watson) received his certification as a law enforcement officer, certification number 21215, on June 28, 2004. His certification is currently active.

2. Watson was employed as a full-time law enforcement officer with the Wichita Police Department (WPD) from January 12, 2004 until December 30, 2022.

3. On July 18, 2022, during the course of his employment with WPD, Watson was randomly selected to receive a drug and alcohol test. Watson tested positive for cannabinoids/tetrahydrocannabinol (THC). WPD suspended Watson for 160 hours, pursuant to Wichita City policy, and initiated an investigation on the basis of the positive test for an illegal substance.

4. During WPD's investigation of Watson, Watson denied intentionally using THC. Watson said he may have unintentionally ingested THC during a vacation he took to Belize from June 4-9, 2022, and told WPD that his positive test result could not have come from any other intentional ingestion of THC. WPD's investigation, which included consultation with various forensic toxicologists, indicated that Watson's account could not be true.

5. Effective December 30, 2022, Watson was terminated by WPD for using an illegal substance and for dishonesty in an official investigation. In response to the notice of termination filed by WPD, the Commission undertook an investigation of Watson's conduct and found evidence of violations of the Kansas Law Enforcement Training Act (KLETA).

6. The Commission's Investigative Committee determined Watson had violated the following two provisions of the KLETA: (1) unprofessional conduct in violation of K.S.A. 74-5616(b)(7), as defined in Kansas Administrative Regulations 106-2-3(j)(1 & 5); and (2) failing to maintain the certification requirements of K.S.A. 74-5605(b)(5) in violation of K.S.A. 74-5616(b)(1). Based upon these violations, the Investigative Committee issued a Summary Proceeding Order revoking Watson's law enforcement certification. The Commission received Watson's September 11th, 2023, request for a hearing on this matter.

7. Prior to the hearing, the parties stipulated to four Respondent exhibits.

Hearing

8. The hearing was held on January 18, 2024. Watson appeared in person and was represented by counsel Donald R. Aubry. Watson was advised of his right to present evidence and witnesses. All witnesses were sworn prior to testifying. The

Commission admitted Watson's Respondent exhibits 1-4, and Commission's exhibits 1-15.

9. On July 18, 2022, Watson submitted to a random urinalysis drug screening at the direction of WPD. Watson's test was positive for marijuana metabolites (delta-9 THC carboxy), indicating he had ingested THC. Pursuant to the City of Wichita's drug and alcohol policy, Watson was suspended without pay for one hundred sixty hours. At the same time, WPD opened an internal investigation into Watson to determine if Watson had possessed and ingested an illegal substance (THC).

10. WPD's investigation of Watson was conducted by WPD Detective Joseph Pichler (Pichler). During his investigation, Pichler interviewed Watson on October 13 and October 19, 2022. In the course of these interviews, Pichler asked Watson if Watson had knowingly ingested marijuana or any THC-containing substance in the last year. Watson repeatedly denied smoking, eating, vaping, or otherwise ingesting any THC during the prior year. Watson volunteered that, rather than intentionally ingesting THC, he may have unintentionally, or recklessly, ingested THC during a vacation he took to Belize from June 4 through June 9, 2022.

11. Watson's testimony at the hearing matched what he told Pichler during the WPD investigation. Watson said that while he was in Belize, he met some people who were smoking marijuana. Those people offered Watson marijuana, which he declined. They then offered Watson Garifuna cigarettes, which Watson accepted. According to Watson, a Garifuna cigarette is made locally in Belize and consists of tobacco wrapped in a Garifuna leaf, then wrapped again in cigarette paper. Watson smoked two of these cigarettes while he was in Belize. After smoking two Garifuna cigarettes, and just prior to leaving Belize, Watson learned that the Garifuna leaf in the cigarettes is sometimes dipped in a substance containing THC. Watson testified that his positive test for THC, on July 18, 2022, was likely the result of smoking two THC-infused Garifuna cigarettes between June 4-9, 2022. Watson insisted there was no other way that he could have ingested THC—he denied using any THC product and was not aware of any other means by which he might have produced a positive test result for THC.

12. On October 20, 2022, during his investigation of Watson, Pichler interviewed Dr. Timothy Rohrig, former Director and Chief Toxicologist at the Sedgwick County Regional Forensic Science Center. Dr. Rohrig told Pichler that for a first-time or naïve user of marijuana, i.e., someone without any recent THC exposure, "the likelihood of them testing positive beyond a week after last exposure is, uh, extremely remote... It would be almost impossible, uh, to have single-use, five weeks remote, and still test positive." (Comm. Exhibit 8, p. 2-3).

13. On October 21, 2022, Pichler interviewed Dr. Carrie Hodges, a forensic toxicology supervisor at the Kansas Bureau of Investigation (KBI). Dr. Hodges testified at the hearing as well. She holds two bachelor of science degrees in Microbiology and Clinical Laboratory Sciences, is certified as a diplomat by the American Board of Forensic Toxicology, and has extensive training in clinical forensics at the KBI, where she annually

oversees thousands of tests detecting the presence of THC and THC metabolites. Dr. Hodges' testimony at the hearing substantially repeated what she told Pichler in his interview. On the basis of her experience, education, and training, Dr. Hodges said that naïve users of THC may test positive for up to seven days after exposure, while a chronic, or daily user, may test positive for up to thirty days after last exposure. Individual factors, such as weight, sex, age, and race, may affect how long within those ranges the THC metabolites are present in the body and thus for how long after exposure they may produce a positive test result, but this individual variability is factored into the given range. Dr. Hodges testified that it is not possible for an individual with no prior exposure to THC in the last year to test positive five weeks after ingesting THC.

14. Pichler produced a report, based on his investigation, which showed that forensic experts did not believe that it was possible for Watson to produce a positive test for THC metabolites unless he had also ingested THC after, and also possibly before, his Belize vacation. Watson's account, in which he ingested THC only during his vacation from June 4-9, 2022, was inconsistent with what the forensic scientists said was biologically possible. Watson's account could not be true, and he must have used a THC product on another occasion closer to the July 18, 2022, testing date. On the basis of this investigation, WPD terminated Watson for using an illegal substance and for dishonesty in an official investigation, effective December 30, 2022.

15. WPD subsequently informed the Commission of the circumstances of Watson's termination. The Commission initiated an investigation into Watson's conduct. On the basis of the Commission's investigation, the Commission's Investigative Committee produced a Summary Proceeding Order which found that Watson committed two counts of misconduct and lacked the good moral character that is a requirement for law enforcement certification. The Investigative Committee ordered that Watson's certification be revoked.

16. At the hearing, Watson testified that, in 2022, he did not use any substances containing THC except unintentionally during June 4-9, 2022, while he was in Belize. Watson accepted responsibility for recklessly ingesting an unknown substance, in the form of Garifuna cigarettes, that he received from people he had recently met in a foreign country, but said he did not otherwise use any illegal substances before or after June 4-9, 2022. Watson maintained that he had been honest with WPD and the Commission since he tested positive for THC in 2022. Moreover, since WPD had never previously terminated the employment of anyone who violated the WPD drug and alcohol policy, Watson had no reason to lie about using illegal substances. Watson said his positive test on July 18, 2022, was not necessarily proof that he had lied about using THC. Though Watson did not submit expert testimony or any published research to support his claim, he argued that his positive test result more than five weeks after a naïve use of THC was a scientifically possible outlier that defied the experience of the forensic scientists. Watson produced evidence of an exemplary employment record during nearly twenty years at WPD and expressed his hope that he would be able to resume his law enforcement career.

CONCLUSIONS OF LAW

17. Administrative proceedings to suspend or revoke the certification of a law enforcement officer are conducted pursuant to the Kansas Administrative Procedure Act (KAPA), K.S.A. 77-501, *et seq.* K.S.A. 74-5616(c). Under the KAPA, the Commission's Investigative Committee issued a Summary Order Revoking Certification August 30, 2023, after concluding that Watson violated two provisions of the KLETA. On September 11, 2023, Watson requested a hearing on the order. The Commission has jurisdiction over this matter.

18. Clear and convincing evidence was presented at the hearing to show Watson violated the following provisions of the KLETA: (1) two counts of unprofessional conduct under K.S.A. 74-5616(b)(7), as defined in Kansas Administrative Regulations 106-2-3(j)(1 & 5); and (2) one count under K.S.A. 74-5616(b)(1), failing to maintain the certification requirements of K.S.A. 74-5605(b)(5), as his conduct indicated he lacked good moral character which warrants the public trust.

Unprofessional Conduct, First Count

19. KLETA authorizes the Commission to suspend, condition or revoke the certification of a law enforcement officer who engages in unprofessional conduct as defined in the Commission's regulations. The Commission's regulations, K.A.R. 106-2-3(j)(5), define unprofessional conduct as "using any controlled substance that is unlawful to possess," as unlawful possession is defined in K.S.A. 21-5706. K.S.A. 21-5706(b)(7) makes it unlawful to possess any substance designated in K.S.A. 65-4105(h), which includes all tetrahydrocannabinols (THC).

20. On July 18, 2022, Watson tested positive for THC metabolites, which proved that he had used a substance containing THC, which is unlawful to possess under K.S.A. 65-4105(h).

21. Based on expert forensic testimony, Watson's positive test for THC must have been the result of Watson using a prohibited, controlled substance containing THC within one week to thirty days of July 18, 2022, while Watson resided in the state of Kansas.

22. Based on the totality of the evidence, the Commission concludes that there is clear and convincing evidence to show that Watson engaged in unprofessional conduct by using a controlled substance that is unlawful to possess in Kansas, in violation of K.S.A. 74-5616(b)(7), as defined in K.A.R. 106-2-3(j)(5).

Unprofessional Conduct, Second Count

23. KLETA authorizes the Commission to suspend, condition or revoke the certification of a law enforcement officer who engages in unprofessional conduct as defined in the Commission's regulations. Unprofessional conduct includes intentionally using a false statement in any official document or communication. K.A.R. 106-2-3(j)(1).

24. Once Watson tested positive for THC metabolites on July 18, 2022, he informed WPD investigator Detective Pichler, in an interview on October 13, 2022, that he had not intentionally used any substance containing THC within the last year. In an interview with Pichler on October 19, 2022, Watson repeated that he had not used THC in the last year or the last five years. Watson denied using THC during 2022 in a letter he wrote to WPD on December 20, 2022, denied using THC during 2022 when he spoke to the Commission's investigator, George Brown, and denied using THC during 2022 when he testified before the Hearing Panel on January 18, 2024. Since July 18, 2022, Watson has repeated and consistently maintained that the only possible source of THC that could account for his positive test was the Garifuna cigarette ingestion that occurred during his Belize vacation June 4-9, 2022.

25. Based on expert forensic testimony, Watson's positive test result on July 18, 2022, could not have been produced by the Garifuna cigarettes Watson smoked during the period from June 4-9, 2022. Watson's July 18, 2022, positive test for THC must have been produced by his use of a controlled substance containing THC either within one week of July 18, 2022, if Watson was not a chronic user of THC, or within thirty days of July 18, 2022, if Watson was a chronic, daily user of THC prior to the period beginning thirty days before July 18, 2022. Watson did not offer credible forensic evidence that his positive test for THC could have been produced by the Garifuna cigarettes he smoked in Belize. Therefore, Watson's statements that he did not use any controlled substance containing THC except unintentionally in Belize from June 4-9, 2022, are not credible. Accordingly, Watson's several denials concerning his use of THC in 2022 constitute false statements, which occurred in the course of official WPD and Commission investigations.

26. Based on the totality of the evidence, the Commission concludes that there is clear and convincing evidence to show that Watson engaged in unprofessional conduct by making false statements in official communications, in violation of K.S.A. 74-5616(b)(7), as defined in K.A.R. 106-2-3(j)(1).

Failure to Maintain Certification Requirement of Good Moral Character

27. KLETA authorizes the Commission to suspend, condition, or revoke the certification of a law enforcement officer who fails to meet and maintain the requirements of K.S.A. 74-5605(b)(5), which requires law enforcement officers to have good moral character sufficient to warrant the public trust. K.S.A. 74-5616(b)(1).

28. K.A.R. 16-2-4(a) defines the term "good moral character" to include the following personal traits or qualities:

- (1) Integrity;
- (2) honesty;
- (3) upholding the laws of the state and nation;
- (4) conduct that warrants the public trust; and
- (5) upholding the oath required for certification as specified in K.A.R. 106-3-6.

The required oath for certification as a law enforcement officer is:

On my honor, I will never betray my badge, my integrity, my character, or the public trust. I will always have the courage to hold myself and others accountable for our actions. I will always uphold the constitution of the United States and of the state of Kansas, my community, and the agency I serve. K.A.R. 106-3-6.

29. Any single incident or event is sufficient to show that an officer has failed to maintain good moral character sufficient to warrant the public trust. K.A.R. 106-2-4(b).

30. The practice of law enforcement is reliant upon the trait of good moral character sufficient to warrant the public trust. The trust that the public places in a law enforcement officer is based upon the expectation that an officer is honest, candid, fair, and respectful of the laws and individuals. Any officer failing to adhere to these standards has compromised their integrity.

31. The Commission hereby incorporates by reference the paragraphs numbered 8 through 26 above. The Commission determines those paragraphs show Watson's conduct clearly demonstrates a lack of good moral character sufficient to warrant the public trust due to his use of a controlled substance, in violation of the laws of Kansas and the United States, as well the professional standards of conduct that apply to certified law enforcement officers. In addition, Watson's repeated dishonesty about his use of a controlled substance demonstrates that he lacks the honesty and integrity that are integral qualities of good moral character. Watson's conduct was conduct that destroys the public trust as well as betrays his badge and integrity as a law enforcement officer.

32. Based upon the totality of the evidence, the Commission concludes that there is clear and convincing evidence to show Watson has failed to maintain the requirements for certification as a law enforcement officer, specifically the requirement in K.S.A. 74-5605(b)(5) of "good moral character sufficient to warrant the public trust," thereby violating K.S.A. 74-5616(b)(1).

Sanction

33. The Commission has concluded that the facts show that Watson has violated two provisions of the KLETA. Watson engaged in unprofessional conduct by


using a controlled substance and by lying about it in communications with law enforcement. K.S.A. 74-5616(b)(7). Watson has also failed to maintain the good moral character, warranting the public trust, that is required of his certification. K.S.A. 74-5616(b)(1).

34. Based on the above violations, separately and collectively, the Commission determines that the law enforcement officer certification issued to Watson should be revoked.

ORDER

Upon consideration of the above findings of fact and conclusions of law, it is the decision and order of the Commission that the law enforcement certification issued to Donielle Watson should be and is hereby revoked. It is the further decision and order of the Commission that Donielle Watson must surrender and return to the Commission all evidence of his certification as a law enforcement officer with thirty (30) days from the date entered on the certificate of service below.

IT IS SO ORDERED.

 **As authorized by:**

Roger Soldan
Commissioner and
Chair of Hearing Panel
As designated by and on behalf of the
Kansas Commission on Peace
Officers' Standards and Training

NOTICE OF ADMINISTRATIVE RELIEF

The above Order revoking the certification as a law enforcement officer issued to Donielle Watson is a final order. Pursuant to K.S.A. 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. 77-528, a party may file with the Commission 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

Pursuant to K.S.A. 77-613, 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 agency officer who may receive service of a petition for reconsideration, a petition for a stay, or a petition for judicial review on behalf of the Board is Doug Schroeder, Kansas Commission on Peace Officers' Standards and Training, 1999 N. Amidon, Suite 350, Wichita, KS 67203.

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of January, 2024, a copy of the above Final Order and Notice of Administrative and Judicial Relief was deposited with the United States Postal Service, postage pre-paid, and addressed to:

Donielle Watson



Donald R. Aubry
The Aubry Law Firm, P.A.
10975 Benson Drive, Suite 370
Overland Park, KS 66210

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

Original filed with:

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