



BEFORE THE KANSAS COMMISSION ON PEACE OFFICERS' STANDARDS AND TRAINING

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In the Matter of)
)
JUSTIN HERB)
 #28590)
)

Case No. 2021-0233

CONSENT AGREEMENT AND ORDER OF REVOCATION

Pursuant to K.S.A. 77-505

Now on this 17th day of November, 2022, the above-referenced matter comes on for consideration by the Kansas Commission on Peace Officers' Standards and Training (Commission). Under the Kansas Administrative Procedure Act, the Commission has delegated its authority to hear and decide the above-referenced matter to the Hearing Panel, which is comprised of the following Commissioners: Herman Jones, Superintendent of the Kansas Highway Patrol; Don Scheibler, Chief of the Hays Police Department; and Kirk Thompson, Director of the Kansas Bureau of Investigation. The Commission is represented by its litigation counsel, Michelle R. Meier, Special Assistant Attorney General. Respondent, Justin Herb, is represented by Thomas G. Lemon, of Cavanaugh, Biggs & Lemon, P.A.

To resolve this matter, the parties have agreed to enter into this Consent Agreement and Order of Revocation.

Justin Herb (Respondent) agrees, stipulates, and acknowledges that if this matter were to proceed to hearing, the information and statements below would be presented by clear and convincing evidence to the Hearing Panel.

Procedural History

1. The Commission received information concerning Respondent's conduct as a law enforcement officer. As a result, the Commission investigated the information and the Commission Investigative Committee determined Respondent violated provisions of the Kansas Law Enforcement Training Act (KLETA), K.S.A. 74-5601 *et seq.*, or regulations adopted thereunder. Based upon that determination, the Commission Investigative Committee issued a Summary Order of Revocation to revoke Respondent's law enforcement certification on May 16, 2022. Respondent timely requested a hearing,

which was scheduled for September 7, 2022, and subsequently rescheduled for December 6, 2022.

Stipulated Facts

2. The Commission granted Respondent a full-time law enforcement certification, certification number 28590.
3. Respondent was employed as a full-time law enforcement officer with the Topeka Police Department from July 6, 2015, to October 29, 2021.
4. After meeting on a law enforcement related call in 2019, Respondent and L.R. formed a consensual social and then sexual relationship. Respondent engaged in sex with L.R. while on-duty, sometimes leaving a recruit officer in the patrol car or at the station while doing so. Respondent revealed confidential law enforcement information to L.R. during their relationship.
5. According to L.R., Respondent provided her with law enforcement “amenities,” such as extra patrols at her properties or running license plates or people for her, when the two were having sex but would stop these activities during periods they were not. Respondent confirmed that L.R. received a lot of extra patrol to her property when he was in the area.
6. The above factual statements are true and correct and provide legally sufficient grounds to determine whether Respondent is in violation of the KLETA, or regulations adopted thereunder.

Conclusions of Law

7. Pursuant to K.S.A. 74-5616(b)(7), the Commission may revoke the certification of any police or law enforcement officer who has engaged in unprofessional conduct as defined by rules and regulations of the Commission.
8. K.A.R. 106-2-3(h) defines unprofessional conduct as exploiting or misusing the position as an officer to establish or attempt to establish a financial, social, sexual, romantic, physical, intimate, or emotional relationship.
9. Pursuant to K.S.A. 74-5616(b)(1) the Commission may revoke the certification of a police or law enforcement officer who fails to meet and maintain the requirements of K.S.A. 74-5605 or 74-5607a, and amendments thereto.
10. Respondent’s conduct shows that he lacks the requirements defined in K.A.R. 106-2-4(a), and required by K.S.A. 74-5605(b)(5).
11. These legal conclusions are correct and sufficient grounds to revoke Respondent’s certification as a law enforcement officer.
12. Respondent acknowledges and agrees that he violated the provisions of the KLETA enumerated in paragraphs seven through eleven.

13. The revocation of Respondent's certification as a law enforcement officer is appropriate for his violations of the KLETA, or regulations adopted thereunder, and is not arbitrary or capricious, regardless of whether those violations are considered separately or collectively.
14. Respondent does not dispute any of the above facts or conclusions and waives any further proof in this or any other related proceeding before or initiated by the Commission.

Acknowledgements and Agreement

Justin Herb (Respondent) fully understands, agrees, and stipulates to the following:

15. The Commission is the Kansas agency vested with the authority to carry out and enforce the provisions of the KLETA. Under the KLETA, the Commission is vested with the authority to conduct proceedings and hearings to condition, suspend, reprimand, censure, deny, or revoke the certification of a police officer or law enforcement officer.
16. Respondent states he is of sound mind and not under the influence of or impaired by alcohol, any medication, or any drug. By signing this Consent Agreement and Order of Revocation, Respondent knowingly and voluntarily submits to the jurisdiction of the Commission in this matter.
17. Respondent and the Commission mutually desire to enter into this Consent Agreement and Order of Revocation in lieu of any proceeding or hearing on the issue or issues of whether Respondent violated any provision in the KLETA, or any regulation adopted pursuant to the KLETA, and if so, whether his certification should be conditioned, suspended, reprimanded, censured, or revoked.
18. In lieu of an adjudicatory hearing in this matter, Respondent hereby voluntarily surrenders his certification as a law enforcement officer in the State of Kansas, certification number, 28590. Respondent knowingly and voluntarily acknowledges and stipulates to the facts, legal conclusions, conditions, and orders as stated herein.
19. By surrendering his certification and voluntarily entering into this Consent Agreement and Order of Revocation, Respondent acknowledges and agrees that he waives all rights to a hearing and an adjudication by the Hearing Panel regarding the applicable facts, law, and penalty, as well as reconsideration of such adjudication, under the Kansas Administrative Procedure Act (KAPA), K.S.A. 77-507 *et seq.* Respondent acknowledges and agrees he also waives all rights for review under the Kansas Judicial Review Act (KJRA) K.S.A. 77-601 *et seq.* Respondent further understands his waivers will result in the waiver of the following rights under the KAPA and the KJRA:
 - A. The right to contest any alleged violation of the KLETA or regulations adopted thereunder;
 - B. the right to have a public hearing on the issues in this matter;
 - C. the right to confront and cross-examine witnesses called to testify against me;
 - D. the right to present evidence on my own behalf;
 - E. the right of compulsory process to secure attendance of witnesses to testify on my own behalf;

- F. the right to testify on my own behalf;
- G. the right to receive written findings of fact and conclusions of law to support the decision on the merits of the issues in this matter; and
- H. the right to obtain judicial review of the Commission's decision.

20. Respondent acknowledges he is represented by counsel of his own choosing and expense, Thomas G. Lemon, of Cavanaugh, Biggs & Lemon, P.A. Respondent voluntarily enters into this Consent Agreement and Order of Revocation after having been given the opportunity to consult with his legal counsel.
21. Respondent acknowledges he has read this Consent Agreement and Order of Revocation in its entirety, he understands its legal consequences, and he agrees that none of its provisions or terms are unconscionable, arbitrary, or capricious.
22. The parties agree this Consent Agreement and Order of Revocation is intended to resolve only violations arising out of the facts set forth in the Summary Order of Revocation in this matter. The Commission reserves jurisdiction regarding any other potential complaints arising from circumstances or incidents other than those concerning the Summary Order of Revocation in this matter.
23. Respondent understands that the Commission is free to accept or reject this Consent Agreement and Order of Revocation, and if rejected, the Commission will begin proceedings authorized under the KAPA. If either party should reject this Consent Agreement and Order of Revocation, it shall be regarded as null and void and will not be regarded as evidence against either party at a subsequent proceeding or hearing in this matter. Respondent will be free to present a defense and no inferences will be made from his willingness to consider this Consent Agreement and Order of Revocation. It is further agreed that neither the presentation of this Consent Agreement and Order of Revocation nor the Commission's consideration of the same will be deemed to have unfairly or illegally prejudiced the Commission or its individual members and thereby Respondent agrees to waive any rights he may have to challenge the impartiality of the Commission or its members to conduct any proceeding or hearing regarding the incident or incidents in this matter if either party rejects this Consent Agreement and Order of Revocation.
24. The parties agree this Consent Agreement and Order consists of a total of seven (7) pages, including the signature and certificate of service pages, and constitutes the entire agreement between Respondent and the Commission. This Consent Agreement and Order of Revocation may only be changed, modified, or amended by a written agreement signed by the parties and a member of the Hearing Panel, and filed with the Commission.
25. By signing this Consent Agreement and Order of Revocation, Respondent consents to the submission of this Consent Agreement and Order of Revocation to the Hearing Panel, and understands that upon approval by the Hearing Panel, this Consent agreement and Order becomes a final order of the Commission. Respondent understands that the Consent Agreement and Order of Revocation shall become effective on the day it is approved, accepted, signed, and entered as an order of the Commission.
26. Upon execution by all parties and entry as an order by the Commission, Respondent acknowledges this Consent Agreement and Order of Revocation becomes a public record and is subject to disclosure under the Kansas Open Records Act.

27. Respondent acknowledges and agrees this Consent Agreement and Order shall remain a part of his permanent certification record and be considered as disciplinary action. Respondent further understands that, for purposes of reporting to the National Decertification Index, this matter shall be categorized as Adverse Action Classification: Order of Revocation.
28. Respondent does hereby fully, completely, and finally release the Commission and its agents, staff, or employees from any and all claims, charges, demands, damages, costs, expenses, actions and causes of action of every kind and whatsoever related to this Consent Agreement and Order of Revocation. The Commission admits to no liability in any way related to this Consent Agreement and Order of Revocation.
29. Respondent acknowledges and agrees this Consent Agreement and Order of Revocation is in conformance with Kansas and federal laws and the Commission has jurisdiction to enter into this Consent Agreement and Order of Revocation and to revoke his certification as a law enforcement officer. Respondent further agrees that the KLETA is constitutional on its face and as applied in this case. Additionally, this Consent Agreement and Order of Revocation shall be interpreted under Kansas law and construed as if jointly prepared and written by the parties, and any uncertainty or ambiguity shall not be interpreted against either party.
30. The parties agree this Consent Agreement and Order of Revocation shall be interpreted under Kansas law and, in the event a Kansas court of competent jurisdiction deems any provision of this Consent Agreement and Order of Revocation invalid or unenforceable, the remaining provisions of this Consent Agreement and Order of Revocation shall be given full force and effect.
31. By surrendering his certification and signing this agreement, Respondent agrees and acknowledges the Commission will revoke his certification as a law enforcement officer and this disposition is just and appropriate under the above stated facts, conclusions, stipulations, and acknowledgments.
32. Respondent further agrees not to seek or request reinstatement or certification as a law enforcement officer in Kansas for a period of five (5) years from the effective date of this Consent Agreement and Order of Revocation. If Respondent makes such a request after that time, he acknowledges he must provide evidence to show he meets the qualifications for certification as a law enforcement officer pursuant to K.S.A. 74-5605, and amendments thereto, as well as the factors stated in K.S.A. 74-5622, and amendments thereto, for reinstatement or certification as a law enforcement officer.


ORDER

Based upon the above acknowledgements, agreements, and stipulations of applicable facts, law, and conclusions, the Commission hereby accepts Justin Herb's surrender of his certification as a law enforcement officer and orders the revocation of his law enforcement certification.

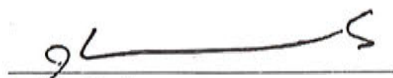
It is the further decision and Order of the Commission that Justin Herb must return to the Commission all evidence of his certification as a law enforcement officer within thirty (30) days from the date entered on the certificate of service below.


It is the further decision and Order of the Commission that the Hearing scheduled for December 6, 2022, is hereby cancelled for mootness.


IT IS SO ORDERED.


Commissioner and Member of Hearing Panel
As authorized by and on behalf of the
Kansas Commission on Peace Officers' Standards and Training

AGREED AND APPROVED BY:



Justin Herb
Respondent


Thomas G. Lemon
Cavanaugh, Biggs & Lemon P.A.
Attorney for Respondent Justin Herb


Michelle R. Meier
Special Assistant Attorney General
Litigation Counsel for the Commission on
Peace Officers' Standards and Training

CERTIFICATE OF SERVICE

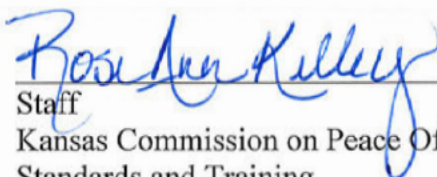
This is to certify that on the 17th day of November, 2022, a copy of the above Consent Agreement and Order of Revocation was deposited in the United States mail, first-class postage prepaid, and addressed to:

JUSTIN HERB


Thomas G. Lemon
Cavanaugh, Biggs & Lemon P.A.
3200 SW Huntoon
Topeka, KS 66604

I further certify that on the same day, a copy of the above Consent Agreement and Order was personally delivered to:

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



Staff
Kansas Commission on Peace Officers'
Standards and Training