

2014, Cunningham requested additional time in which to respond to the Director's motion. On August 14, 2014, we granted Cunningham's request for more time. We gave Cunningham until August 25, 2014 to file a response, but he did not do so.

Under 1 CSR 15-3.446(6)(A),¹ we may grant summary decision "if a party establishes facts that entitle any party to a favorable decision and no party genuinely disputes such facts." The parties must establish the facts by admissible evidence.² Along with the motion for summary decision, the Director submitted an affidavit of Jeremy Spratt, the Program Manager for the Peace Officer Standards and Training Program, regarding Cunningham's license status. The affidavit is admissible evidence under 1 CSR 15-3.446(6)(B). Additionally, and as noted above, the Director noted Cunningham's admissions to the allegations contained in the Director's complaint and provided Cunningham's answers to the Director's request for admissions, both of which constitute admissible evidence under the regulation.³

Since he never responded to the motion, Cunningham has provided nothing to controvert the Director's admissible evidence or to give us any reason not to adopt our findings of fact from the admitted allegations contained in the complaint and his admissions solicited through discovery.

Findings of Fact

1. Cunningham possessed a peace officer license at all relevant times.
2. On December 26, 2010, Cunningham committed the criminal offense of battery in violation of 720 Illinois Compiled Statutes Section 5/12-3.

¹ All references to the CSR are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

² 1 CSR 15-3.446(6)(B).

³ See also *United Mo. Bank, N.A. v. City of Grandview*, 179 S.W.3d 362, 371 (Mo. App. W.D. 2005) (admissions against interest are admissible).

3. On December 26, 2010, Cunningham committed the criminal offense of assault in violation of 720 Illinois Compiled Statutes 5/12-1.

4. On December 26, 2010, Cunningham committed the criminal offense of disorderly conduct in violation of 720 Illinois Compiled Statutes 5/26-1.

5. On December 26, 2010, Cunningham committed the criminal offense of reckless conduct in violation of 720 Illinois Compiled Statutes 5/12-5.

6. These four offenses were committed by Cunningham while he was on active duty or under color of law.

7. In the process of committing these offenses, Cunningham intentionally or knowingly caused bodily harm by kicking and spitting upon another person.

Conclusions of Law

We have jurisdiction to decide this matter.⁴ The Director is responsible for filing a complaint alleging cause exists to impose discipline⁵ and bears the burden of proving so by a preponderance of the evidence.⁶

Cunningham has admitted certain facts and that those facts authorize discipline. However, the statutes and case law instruct us that we must “separately and independently” determine whether such facts constitute cause for discipline.⁷ Therefore, we independently assess whether the facts admitted allow discipline under the law cited.

Here, the Director alleges there is cause for discipline of Cunningham’s peace officer license under § 590.080.1(2) and (3), which provides:

⁴ Section 590.080.2, RSMo Cum. Supp. 2013.

⁵ *Id.*

⁶ See *Kerwin v. Mo. Dental Bd.*, 375 S.W.3d 219, 229-230 (Mo. App. W.D. 2012)(dental licensing board demonstrates “cause” to discipline by showing preponderance of evidence).

⁷ *Kennedy v. Missouri Real Estate Commission*, 762 S.W.2d 454, 456-57 (Mo. App. E.D. 1988).

The Director shall have cause to discipline any peace office licensee who:

(2) Has committed any criminal offense, whether or not a criminal charge has been filed; and

(3) Has committed an act while on active duty or under color of law that involves moral turpitude or a reckless disregard for the safety of the public or any person[.]

The Director has established by a preponderance of the evidence, which has been admitted and not controverted by Cunningham, that he committed four criminal offenses while on active duty or under color of law. The Director has also met his burden to demonstrate that these actions, involving kicking and spitting upon another person, were taken in reckless disregard for the safety of that person. The Director has therefore established cause for discipline under § 590.080.1(2) and (3).

Summary

The Director has cause under § 590.080.1(2) and (3) to discipline Cunningham's peace officer license.

SO ORDERED on September 30, 2014.

\s\ Sreenivasa Rao Dandamudi
SREENIVASA RAO DANDAMUDI
Commissioner