

Before the
Administrative Hearing Commission
State of Missouri



DIRECTOR, DEPARTMENT OF PUBLIC SAFETY,)	
)	
)	
Petitioner,)	
)	
vs.)	No. 13-1634 PO
)	
DANIEL J. DONNELLY,)	
)	
Respondent.)	

ORDER

Cause exists to discipline the peace officer license of Daniel J. Donnelly because he committed a criminal offense. We grant the Director’s motion for partial summary decision.

Procedure

Petitioner Director of the Department of Public Safety filed a complaint herein on September 12, 2013. Respondent Daniel J. Donnelly was served with a copy of the complaint on September 17, 2013, but did not file an answer or any other response. Because he failed to answer or otherwise respond to the complaint, we deem the allegations of fact it contains admitted. 1 CSR 15-3.380(7)(C)1.¹

The Director alleges in the complaint that cause for discipline of Mr. Donnelly’s license

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

exists under § 590.080.1(2) and (3), RSMo.² The Director filed a motion for partial summary decision on October 30, 2013, asking us to find cause exists under § 590.080.1(2). We notified Mr. Donnelly that he had until November 25, 2013 to respond to the motion, but he filed nothing. By failing to respond to the motion for summary decision, Mr. Donnelly has failed to raise a genuine issue as to facts the Director properly established in his motion. 1 CSR 15-3.446(6)(B).

We may grant a motion for summary decision “if a party establishes facts that entitle any party to a favorable decision and no party genuinely disputes such facts.” 1 CSR 15-3.446(6)(A). The parties must establish the facts by admissible evidence, which includes affidavits or other evidence admissible under the law. 1 CSR 15-3.446(6)(B). Here, the Director submitted a business records affidavit and certified court records from the Franklin County Circuit Court with his motion. The affidavit is admissible evidence under 1 CSR 15-3.446(6)(B). The certified records are admissible evidence under § 490.130, RSMo (2000). Mr. Donnelly’s admission of the allegations in the complaint are also admissible evidence. *See Coldwell Bankers-Gordon Co. Realtors v. Waters*, 791 S.W.2d 412, 415 (Mo. App. W.D. 1990) (party’s admissions of fact constitute admissible evidence, as admissions against interest).

Accordingly, our findings of fact are drawn from the Director’s affidavit and the certified records, and Mr. Donnelly’s admissions of the facts contained in the complaint.

Findings of Fact

1. Daniel J. Donnelly was first licensed as a peace officer by the Director of the Department of Public Safety on August 18, 1992. Mr. Donnelly’s license has been current and active since then.

² All references to “RSMo” are to the Revised Statutes of Missouri (Supp. 2012), unless otherwise noted.

2. The Franklin County prosecuting attorney charged Mr. Donnelly with one count of driving while intoxicated, a class B misdemeanor, on May 12, 2011.

3. Mr. Donnelly pled guilty to the charge on June 6, 2012 in the Franklin County Circuit Court.

4. The court suspended the imposition of sentence and placed Mr. Donnelly on court-supervised probation for two years.

Conclusions of Law

We have jurisdiction. § 590.080.2, RSMo.

The Director is responsible for issuing and disciplining the licenses of Missouri peace officers. § 590.020, .030, and .080, RSMo. When the Director files a complaint with this Commission asking us to determine there is cause for discipline, the Director bears the burden of proving by a preponderance of the evidence that the licensee committed an act for which the law gives the Director authority to discipline the license. *See Kerwin v. Mo. Dental Bd.*, 375 S.W.3d 219, 229-230 (Mo. App. W.D. 2012) (dental licensing board demonstrated “cause” to discipline by showing preponderance of evidence). A preponderance of the evidence is evidence showing, as a whole, that “the fact to be proved [is] more probable than not.” *Id.* at 230 (*quoting State Bd. of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo. App. W.D. 2000)).

As relevant here, § 590.080.1(2) provides that the Director shall have cause to discipline a licensee who “[h]as committed any criminal offense, whether or not a criminal charge has been filed[.]” The provision does not require final adjudication of guilt by a court.

The undisputed facts show that Mr. Donnelly was charged with and pled guilty to one count of driving while intoxicated, a class B misdemeanor. The trial court suspended imposition of sentence. Accordingly, Mr. Donnelly’s guilty plea is competent and substantial evidence of the conduct charged. *See Nichols v. Blake*, 418 S.W.2d 188, 190 (Mo. 1967); and *Dir., Dep’t of*

Public Safety v. Bishop, 297 S.W.3d 96, 99 (Mo. App. W.D. 2009). But his guilty plea and suspended imposition of sentence do not yield a final judgment, *Yale v. City of Independence*, 846 S.W.2d 193, 195 (Mo. 1993), so he was not estopped from arguing in the instant proceedings that he did not commit the crime, *Bishop*, 297 S.W.3d at 99.

However, he presented no evidence in response to the Director's motion. Therefore, based on the undisputed facts, we conclude Mr. Donnelly committed the crime of driving while intoxicated.

The Director has cause to discipline Mr. Donnelly's license under § 590.080.1(2).

Conclusion

We grant the Director's motion for partial summary decision.

The Director shall notify us no later than January 22, 2014 whether he intends to pursue the remaining allegation presented in the complaint.

SO ORDERED on December 18, 2013.

s/s Alana M. Barragán-Scott
ALANA M. BARRAGÁN-SCOTT
Commissioner