

Before the
Administrative Hearing Commission
State of Missouri



DIRECTOR OF DEPARTMENT)	
OF PUBLIC SAFETY,)	
)	
Petitioner,)	
)	
vs.)	No. 14-0960 PO
)	
JAMES A. WARD,)	
)	
Respondent.)	

DECISION

James A. Ward is subject to discipline because he committed a criminal offense.

Procedure

On June 11, 2014, the Director of the Department of Public Safety (“the Director”) filed a complaint seeking to discipline Ward. Ward was served with the complaint and our notice of complaint/notice of hearing on June 16, 2014, by certified mail. He did not file an answer.

The Director served his first request for admissions on Ward on June 27, 2014. Ward did not respond, and the Director filed a motion for summary decision on August 14, 2014. We gave Ward until August 29, 2014, to respond, but he did not respond. On October 6, 2014, the Director withdrew the motion for summary decision and mailed his second request for admissions to Ward. Ward did not respond to the second request for admissions.

The Director filed another motion for summary decision on November 13, 2014. We gave Ward until December 1, 2014, to respond, but he did not respond.

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 Parties may establish facts, or raise a dispute as to such facts, by admissible evidence.² Ward did not respond to the motion for summary decision and therefore did not raise any issue with the facts as the Director stated them in the motion.³

To establish facts in support of summary decision, the Director relies on his second request for admissions and Ward's failure to respond to them. Under the law, a respondent's failure to answer a request for admissions results in the admission of each matter contained therein.⁴ The matters admitted under Rule 59.01 bind the party to whom the requests were addressed and eliminate the need for further proof of the matters admitted.⁵ Such a deemed admission can establish any fact, or "application of the facts to the law, or the truth of the ultimate issue, opinion or conclusion, so long as the opinion called for is not an abstract proposition of law."⁶ That rule applies to all parties, including those acting *pro se*.⁷

Accordingly, the following findings of fact are undisputed.

¹ 1 CSR 15-3.446(6)(A). 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.

² 1 CSR 15-3.446(6)(B).

³ *Id.*

⁴ Missouri Supreme Court Rule 59.01(a). Section 536.073, RSMo 2000, and our Regulation 1 CSR 15-3.420(1) apply Rule 59.01 to this case. Further statutory references are to RSMo Supp. 2013 unless otherwise noted.

⁵ *Killian Constr. Co. v. Tri-City Constr. Co.*, 693 S.W.2d 819, 827 (Mo. App. W.D. 1985), *quoted in Dynamic Computer Solutions, Inc. v. Midwest Marketing Ins. Agency*, 91 S.W.3d 708, 715 (Mo. App. W.D. 2002).

⁶ *Briggs v. King*, 714 S.W.2d 694, 697 (Mo. App. W.D. 1986).

⁷ *Research Hosp. v. Williams*, 651 S.W.2d 667, 669 (Mo. App. W.D. 1983); *see Welty v. State Bd. of Chiropractic Examiners*, 759 S.W.2d 295, 299 (Mo. App. W.D. 1988) (applying the rule to a pro se party in a proceeding before this Commission).

Findings of Fact

1. Ward holds a peace officer license issued by the Director that is current and active and was so between October 25, 2009 and July 2, 2011.

2. Between those dates, Ward represented to the Missouri Division of Employment Security, during weekly claims for unemployment benefits, that he earned less money from his employers than he actually did.

3. Ward knew that these representations were false.

4. Ward incorrectly reported his earnings with the intention of receiving unemployment benefits from the Missouri Division of Employment Security to which he would not otherwise be entitled.

5. As a result of Ward's false representations to the Missouri Division of Employment Security, it paid Ward \$9,219 more than he was entitled to receive based on his actual earnings.

6. Ward appropriated the additional unemployment benefits without the consent of the Missouri Division of Employment Security or by means of deceit or coercion or both.

7. Ward appropriated the additional unemployment benefits with the intention of depriving the Missouri Division of Employment Security thereof.

8. By underreporting his earnings to obtain benefits to which he was not entitled, Ward committed the criminal offense of stealing over \$500.

9. On January 29, 2014, Ward pled guilty in the Circuit Court of Laclede County, Missouri, to the Class A misdemeanor of stealing less than \$500 in violation of § 570.030. He received a suspended imposition of sentence and was placed on probation for two years.

Conclusions of Law

We have jurisdiction to hear the Director's complaint.⁸ The Director has the burden of proving by a preponderance of the evidence that Ward has committed an act for which the law allows discipline.⁹

The Director argues that there is cause for discipline under § 590.080:

1. The director shall have cause to discipline any peace officer licensee who:

* * *

(2) Has committed any criminal offense, whether or not a criminal charge has been filed[.]

Section 556.016¹⁰ defines a criminal offense as follows:

1. An offense defined by this code or by any other statute of this state, for which a sentence of death or imprisonment is authorized, constitutes a "**crime**". Crimes are classified as felonies and misdemeanors.

By not responding to the request for admissions, Ward admitted to certain facts about his conduct and that those facts authorize discipline. But statutes and case law instruct that we must "separately and independently" determine whether such facts constitute cause for discipline.¹¹ Therefore, we independently assess whether the facts admitted allow discipline under the law cited.

The Director argues that Ward committed the criminal act of stealing in violation of § 570.030, which provides:

1. A person commits the crime of stealing if he or she appropriates property or services of another with the purpose to deprive him or

⁸ Section 590.080.2.

⁹ 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).

¹⁰ RSMo 2000.

¹¹ *Kennedy v. Missouri Real Estate Commission*, 762 S.W.2d 454, 456-57 (Mo. App. E.D. 1988).

her thereof, either without his consent or by means of deceit or coercion.

* * *

3. Notwithstanding any other provision of law, any offense in which the value of property or services is an element is a class C felony if:

(1) The value of the property or services appropriated is five hundred dollars or more but less than twenty-five thousand dollars[.]

We agree that the admitted facts satisfy the elements of a Class C felony of stealing property with a value of \$9,219,¹² which falls within the statutory range for value as an element.

Ward is subject to discipline for committing the Class C felony of stealing, a criminal offense.

Summary

There is cause to discipline Ward's license under § 590.080.1(2). We cancel the hearing.

SO ORDERED on December 17, 2014.

\\ Sreenivasa Rao Dandamudi
SREENIVASA RAO DANDAMUDI
Commissioner

¹² We make this determination of the amount based on the failure to respond to the request for admissions rather than the guilty plea since Ward pled guilty to stealing a lesser amount.