

Findings of Fact

1. Cowan is licensed as a peace officer by the Department of Public Safety. Cowan's license is, and was at all relevant times, current and active.
2. Cowan was employed as both a deputy and an office manager by the New Madrid County Sheriff's Department ("New Madrid").
3. Between November 1, 2003 and February 28, 2013, Cowan appropriated at least \$25,000, which was in the possession of New Madrid without its consent and with the purpose to deprive it of the money.
4. The Probable Cause Statement filed in the 34th Judicial Circuit Court ("the Court"), New Madrid County, Missouri, states:
 - a. In 2013 the Missouri State Auditor's Office began a routine audit of the New Madrid County Sheriff's Office financial records. During the course of this audit, numerous discrepancies were located and documented.
 - b. Deborah L. Cowan, who acted as office manager, a sworn deputy with New Madrid County Sheriff's Office was subsequently interviewed. During the course of the interviews with Mrs. Cowan, she admitted to stealing over twenty five thousand dollars from the New Madrid County Sheriff's Office. Mrs. Cowan indicated the thefts began in 2004-05 and continued through the early portion of 2013.
 - c. The State Auditor's Office documented over \$25,000.00 in stolen monies. The information Mrs. Cowan provided is consistent with the dates and methods in which the monies were stolen.^[1]
5. On November 7, 2013, in the Court, Cowan pled guilty to theft/stealing, value of property \$25,000 or more.

¹ Exhibit B to the motion.

6. The Court suspended imposition of sentence and placed Cowan on a five-year term of probation. The Court ordered Cowan to make full restitution in the amount of \$44,000.²

Conclusions of Law

We have jurisdiction to hear this case.³ The Director bears the burden of proving that Cowan's license is subject to discipline by a preponderance of the evidence.⁴ A preponderance of the evidence is evidence showing, as a whole, that "the fact to be proved [is] more probable than not."⁵

The Director argues 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;

(3) Has committed any 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[.]

Criminal Offense

Cowan pled guilty to stealing under § 570.030:

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

² Although the restitution amount is \$44,000 and that is probably the amount she stole, the fact we can find from the guilty plea is that she stole at least \$25,000.

³ Section 590.080.2. Statutory references, unless otherwise noted, are to the 2013 Cum. Supplement to the Revised Statutes of Missouri.

⁴ See *Kerwin v. Mo. Dental Bd.*, 375 S.W.3d 219, 229-30 (Mo. App., W.D. 2012) (dental licensing board demonstrates "cause" to discipline by showing preponderance of evidence).

⁵ *Id.* at 230.

7. Any offense in which the value of property or services is an element is a class B felony if the value of the property or services equals or exceeds twenty-five thousand dollars.[⁶]

A guilty plea resulting in a suspended imposition of sentence does not collaterally estop the issue of whether Cowan committed a criminal offense.⁷ A guilty plea is evidence of the conduct charged. The plea constitutes a declaration against interest, which the defendant may explain away.⁸ Cowan failed to file any response to the complaint or to the motion; thus, the evidence of her conduct is undisputed. We find that she committed the criminal offense of stealing.

There is cause for discipline under § 590.080.1(2).

Act While on Duty or Under Color of Law

The Director asserts that Cowan was employed at New Madrid as a deputy who also acted as the office manager and that she stole the money while on duty as the office manager. The Probable Cause Statement filed with the Court, which was not objected to or rebutted, establishes these facts. Over a period of approximately ten years, while employed by and acting as an office manager for New Madrid, Cowan stole at least \$25,000. The Director argues that this conduct involves moral turpitude.

Moral turpitude is:

an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to society in general, contrary to the accepted and customary rule of right and duty between man and man; everything “done contrary to justice, honesty, modesty, and good morals.”[⁹]

⁶ The relevant portions of this statute did not change between 2003 and the present.

⁷ *Director of the Department of Public Safety v. Bishop*, 297 S.W.3d 96 (Mo. App., W.D. 2009).

⁸ *Nichols v. Blake*, 418 S.W.2d 188, 190 (Mo. 1967).

⁹ *In re Frick*, 694 S.W.2d 473, 479 (Mo. banc 1985) (quoting *In re Wallace*, 19 S.W.2d 625 (Mo. banc 1929)).

Although § 590.080.1(3) references an “act” involving moral turpitude rather than a “crime,” we look to the analysis of a crime involving moral turpitude. In *Brehe v. Missouri Dep’t of Elementary and Secondary Education*,¹⁰ 213 S.W.3d 720 (Mo. App., W.D. 2007), a case that involved discipline of a teacher’s certificate under § 168.071 for committing a crime involving moral turpitude, the court referred to three classifications of crimes:¹¹

- (1) crimes that necessarily involve moral turpitude, such as frauds (Category 1 crimes);
- (2) crimes “so obviously petty that conviction carries no suggestion of moral turpitude,” such as illegal parking (Category 2 crimes); and
- (3) crimes that “may be saturated with moral turpitude,” yet do not involve it necessarily, such as willful failure to pay income tax or refusal to answer questions before a congressional committee (Category 3 crimes).

The court stated that Category 3 crimes require consideration of “the related factual circumstances” of the offense to determine whether moral turpitude is involved.¹²

We determine that felony stealing is a Category 1 crime. Even if we found it to be a Category 3 crime, we would find it involved moral turpitude in this instance. For a period of approximately ten years, Cowan stole from her employer, the New Madrid Sheriff’s Department. By engaging in this course of conduct, she abused the trust placed in her by her employer and acted contrary to honesty and good morals.

There is cause for discipline under § 590.080.1(3).

¹⁰ 213 S.W.3d 720 (Mo. App., W.D. 2007).

¹¹ *Id.* at 725 (quoting *Twentieth Century-Fox Film Corp. v. Lardner*, 216 F.2d 844, 852 (9th Cir. 1954)).

¹² *Brehe*, 213 S.W.3d at 725.

Summary

There is cause for discipline under § 590.080.1(2) and (3). We grant the motion for summary decision and cancel the hearing.

SO ORDERED on March 20, 2015.

\s\ Nicole Colbert-Botchway
NICOLE COLBERT-BOTCHWAY
Commissioner