

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF LAW ENFORCEMENT, )  
CRIMINAL JUSTICE STANDARDS )  
AND TRAINING COMMISSION, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 00-1285  
 )  
MICHAEL BALMAREZ, )  
 )  
Respondent. )  

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RECOMMENDED ORDER

A formal hearing was held in this case on July 21, 2000, in Port St. Joe, Florida, before the Division of Administrative Hearings, by its Administrative Law Judge, Suzanne F. Hood.

APPEARANCES

For Petitioner: Gabrielle Taylor, Esquire  
Department of Law Enforcement  
Post Office Box 1489  
Tallahassee, Florida 32302-1489

For Respondent: Charles A. Costin, Esquire  
Post Office Box 98  
Port St. Joe, Florida 32457-0098

STATEMENT OF THE ISSUES

The Issues are whether Petitioner violated Section 943.13(7), Florida Statutes, and Rules 11B-27.0011(4)(b), 11B-27.0011(c), and 11B-27.005(3), Florida Administrative Code, and if so, what penalty should be imposed.

PRELIMINARY STATEMENT

On or about July 16, 1999, Petitioner Criminal Justice Standards and Training Commission (Petitioner), filed an Administrative Complaint against Respondent Michael Balmarez (Respondent). Said complaint alleged that Respondent had violated Section 943.13(7), Florida Statutes, and Rules 11B-27.0011(4)(b), 11B-27.0011(c), and 11B-27.005(3), Florida Administrative Code.

On October 13, 1999, Respondent filed a request for a formal administrative hearing. Petitioner referred this request to the Division of Administrative Hearings on March 28, 1999.

The parties responded to the Initial Order on April 12, 2000. The undersigned issued a Notice of Hearing dated April 18, 2000, scheduling the formal hearing for July 21, 2000.

At the hearing, Petitioner presented the testimony of two witnesses and offered ten exhibits, which were accepted into evidence. Respondent testified on his own behalf but offered no exhibits for admission into evidence.

Petitioner ordered a copy of the hearing transcript, the original of which was to be filed with the Division of Administrative Hearings. Because the court reporter did not file the transcript of the proceeding within a reasonable time after the hearing, the undersigned's office requested Petitioner to inquire as to the date that it would be filed. Subsequently,

the court reporter filed the hearing Transcript on August 7, 2000.

On August 16, 2000, the parties filed a Joint Motion for Extension of Time to File Proposed Recommended Orders. The undersigned granted this motion by order dated August 17, 2000.

Respondent filed his proposed findings of fact and conclusions of law on August 23, 2000. Petitioner filed its proposed findings of fact and conclusions of law on August 24, 2000.

#### FINDINGS OF FACT

1. At all times material to this proceeding, Respondent held the following certifications: (a) Auxiliary Law Enforcement Officer, Certificate No. 94223 issued on August 6, 1987; (b) Law Enforcement Officer, Certificate No. 94221 issued on April 19, 1990; and (c) Correctional Officer, Certificate No. 94222 issued on September 5, 1991.

2. Respondent possesses an Associate of Arts (A.A.) degree in Criminal Justice Technology and an A.A. in Law Enforcement and Correctional Management. He has nearly completed a Bachelor of Arts degree in Legal Studies. He has approximately 2,500 hours of law enforcement training. At the time of the hearing, Respondent was working for a law firm as a paralegal.

3. Respondent's relevant work history, full and part-time, is as follows: (a) police officer for Jacksonville Sheriff's

Office (6/5/87-4/17/88); (b) Florida State Prison (3/3/89-3/23/89); (c) Starke Police Department (4/5/90-6/27/90); (d) Lawtey Police Department (9/15/90-10/22/90); (e) Hampton Police Department (12/17/93-5/9/94); (f) Lawtey Correctional Institution (9/5/91-7/21/92); (g) Union Correctional Institution (10/2/92-4/6/94); (h) Green Cove Springs Police Department (11/19/92-6/14/93); (i) Hampton Police Department (12/17/93-5/9/94); (j) Department of Corrections (9/23/94-10/6/94); (k) Corrections Corporation of America (CCA) (10/17/94-1/24/95); (l) Springfield Police Department (2/13/95-9/22/95); (m) Port St. Joe Police Department (4/8/96-10/9/96); (n) Springfield Police Department (10/10/96-10/10/97); (o) Escambia County Solid Waste Department (4/21/98-7/16/98); and (p) Mexico Beach Department of Public Safety (11/12/98-11/17/98.)

4. In 1994, Respondent used force on an inmate at the Bradford County Jail. Thereafter, Respondent was served with a summons to appear in court on a charge of battery.

5. On February 28, 1995, Respondent pled nolo contendere to battery in the County Court of the Eighth Judicial Circuit for Bradford County, Florida. The Judgment and Sentence entered by the County Judge withheld adjudication of guilt but ordered Respondent to pay a fine in the amount of \$141.25.

6. As a result of the battery conviction, Petitioner filed an Administrative Complaint against Respondent. After a hearing

conducted pursuant to Sections 120.569 and 120.57(2), Florida Statutes, Petitioner entered a Final Order on July 22, 1998. Petitioner suspended Respondent's criminal justice certification for 12 days to be served within the first six months of his probation. Petitioner placed Respondent on probation for two years beginning August 6, 1998.

7. On May 29, 1998, Respondent submitted an application for employment with the City of Mexico Beach for a position as a patrolman. On this application, Respondent indicated that he had never had "a job connected disease or injury" and that he had never been arrested or charged with any criminal violation. Regarding his work history, Respondent listed only six of the above-referenced jobs. He did not list any former employment unrelated to law enforcement work.

8. Respondent was not selected for the patrolman position in May 1998. However, Respondent's job application was still on file with the City of Mexico Beach when another patrolman position became available in the fall of 1998.

9. Mitchell Pollock was Chief of Police for the City of Mexico Beach in the fall of 1998. Chief Pollock invited Respondent to meet with a five-member committee to interview for the new patrolman position. During the interview, Respondent was asked if he had ever been disciplined by one of his employers. Respondent replied, "I've been in the work force 17,

18 years, and of course I've had disciplinary action taken against me." No one on the interview committee elicited a more specific response and Respondent did not elaborate.

10. Chief Pollock subsequently called a couple of Respondent's former employers. Chief Pollock then had a one-on-one interview with Respondent.

11. During the one-on-one interview with Chief Pollock, Respondent admitted that the City of Springfield sent him to a school in South Florida where he experienced some trouble and was sent home. Respondent told Chief Pollock that he had resigned from the Springfield Police Department due to political pressure.

12. During the interview, Chief Pollock asked Respondent if he had been involved in a racial discrimination situation while he was employed by the Port St. Joe Police Department. Respondent told Chief Pollock that he had no knowledge of such allegations.

13. After the one-on-one interview, Chief Pollock decided to recommend that the City of Mexico Beach hire Respondent as a patrolman. The City Council of Mexico Beach accepted Chief Pollock's recommendation on November 10, 1998.

14. Respondent reported to work on November 12, 1998. One of Respondent's first responsibilities was to fill out a new job

application for insurance purposes and to update his status. He was given the May 29, 1998, job application to use as reference.

15. On the November 12, 1998, application, Respondent indicated that he had never had a job-connected disease or injury. He correctly indicated that he had never been convicted of a felony. Unlike the May 29, 1998, application, the November 12, 1998, application did not contain a question related to prior arrests and/or charges of criminal violations. Respondent did not update his employment history on the second application.

16. After filing out the second application, Respondent advised Chief Pollock that his FDLE certification was on probation. Respondent revealed for the first time that he had pled nolo contendere to battery for hitting a prisoner in the Bradford County Jail.

17. On or about November 12, 1998, the Mexico Beach Police Department received a copy of Respondent's Officer Profile Sheet from FDLE. The background check revealed that Respondent had ten more former employers than the six he listed on his May 29, 1998, job application. The background check also revealed discrepancies in Respondent's dates of employment as reported in the Officer Profile Sheet and as listed in the May 29, 1998, application.

18. The FDLE background check revealed negative employment history that Respondent had not disclosed. During the hearing,

Respondent admitted the following: (a) he quit his job at Florida State Prison without giving notice and began working for Starke Police Department, calling in sick everyday at the prison until he used up leave time to which he believed he was entitled; (b) he left his job at CCA knowing that he was going to be terminated for violating security procedures (taking an inmate out of a secure area without requesting assistance,) and being late for work on two occasions; (c) he was asked to resign from the Starke Police Department during field training; (d) he was asked to resign from the Green Cove Springs Police during field training due to allegations of excessive force; (e) the mayor of the City of Springfield asked Respondent to resign his job as code enforcement officer; (f) he was terminated by the Department of Corrections for abandoning his position; and (g) he quit his job with the Hampton Police Department knowing that he would be fired due to use of force at the Bradford County Jail.

19. The Mexico Beach Police Department also learned that Respondent had filed two worker's compensation claims for work-related injuries. The first injury occurred on April 9, 1999, while Respondent was working for Lawtey Correctional Institution. The second injury occurred on December 16, 1995, while Respondent was working for Department of Juvenile Justice, Bay Regional Juvenile Detention Center. He received



compensation and/or medical benefits in both cases. Respondent did not reveal information related to these two injuries on either of his job applications.

20. Chief Pollock suspended Respondent on November 16, 1998. The Mexico Beach City Council subsequently terminated Respondent's employment on November 17, 1998.

#### CONCLUSIONS OF LAW

21. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this proceeding. Sections 120.569 and 120.57(1), Florida Statutes.

22. Petitioner has the burden of proving the facts alleged in the Administrative Complaint by clear and convincing evidence. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

23. The Administrative Complaint alleges that Respondent is guilty of the following: (a) making a false statement to officials of the Mexico Beach Police Department with the intent to mislead those officials regarding his background for employment; (b) making false statements in writing with the intent to mislead Chief Mitchell Pollock of the Mexico Beach Police Department, a public servant, in the performance of his official duty; and (c) failing to comply with a lawful order of Petitioner filed on July 22, 1998, by violating Section 943.13, Florida Statutes, and/or 11B-27.0011, Florida Administrative Code.

24. Section 943.13(7), Florida Statutes, provides that any person employed or appointed as a law enforcement officer shall "[h]ave a good moral character as determined by a background investigation under procedures established by the commission."

25. Section 943.1395(7), Florida Statutes, authorizes Petitioner to revoke the certification of a law enforcement officer or to impose lesser specified penalties on an officer who fails to maintain good moral character.

26. Rule 11B-27.0011(4), Florida Administrative Code, states as follows in relevant part:

(4) For the purposes of the Commission's implementation of any of the penalties specified in Section 943.1395(6) or (7), F.S., a certified officer's failure to maintain good moral character, as required in Section 943.13(7), F.S., is defined as:

\* \* \*

(b) The perpetration by the officer of an act that would constitute any of the following misdemeanor or criminal offenses, whether criminally prosecuted or not:

Sections . . . 837.06, . . . F.S., . . . .

(c) The perpetration by the officer of an act or conduct which constitutes:

\* \* \*

6. False statements.

27. Section 837.06, Florida Statutes, states that "[w]hoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his or

her official duty shall be guilty of a misdemeanor or the second degree . . . ."

28. In this case, clear and convincing evidence indicates that Respondent made false written statements in violation of Section 837.06, Florida Statutes, even though he has not been criminally prosecuted. Respondent made these false written statements when he submitted his May 29, 1998, and November 12, 1998, job applications, indicating that he had never had a job-connected disease or injury and when he certified his answers on the May 29, 1998, application, indicating that he had never been arrested or charged with any criminal violation. Respondent's actions clearly and convincingly demonstrate that he has failed to maintain good moral character as defined in Rules 11B-27.0011(4)(b) and 11B-27.0011(4)(c), Florida Administrative Code.

29. Respondent asserts that he filled out the May 29, 1998, application hastily and that he did read or understand the application to require disclosure of his prior work-related injuries and/or his conviction for battery. This testimony is not persuasive.

30. As to the work-related injuries, the May 29, 1998, and November 12, 1998, applications simply inquired whether Respondent had ever had a job-connected disease or injury; they did not refer to the settlement of an adversarial worker's

compensation claim. The applications also inquired whether Respondent had received compensation or medical benefits for such an injury, and if so, the length of time that he received such benefits. On both applications, Respondent falsely stated that he had never had a work-related injury and also failed to provide information related to the amounts of compensation or medical benefits that he received for two such injuries and the time that he received them.

31. Respondent was not under any time constraints when he filled out the November 12, 1998, application. He knew that his employer relied on the May 29, 1998, application in making its decision to hire him. He knew or should have known that his employer would rely on the November 12, 1998, application to provide updated information for insurance purposes if for no other reason.

32. As to Respondent's prior conviction for battery, the May 29, 1998, application clearly required him to list any criminal violation for which he had been arrested or charged "even if not formally charged, or no court appearance, or found not guilty, or plead guilty or nolo contendere to any charge to which adjudication of guilt was withheld, or matter if settled by payment of fine or forfeiture of collateral." Given Respondent's level of education and training as a law enforcement officer, his assertion that he only read the word

"arrested," and did not see a need to disclose his summons, charge, and subsequent conviction for battery is not credible.

33. Respondent failed to include relevant information on both applications regarding his employment history.

Respondent's statement that he was rushed when he filled out the May 29, 1998, application arguably explains why he gave incorrect information as to the times that he was employed by some employers, but it does not explain why he failed to list at least ten other periods of employment and unnamed employers. It does not explain why he failed to update his employment history when he filled out the November 21, 1998, application.

Respondent's explanation that he did not provide greater detail about his employment history because he knew it would be revealed on his Officer Profile Sheet during the background investigation is not credible. Respondent knew or should have known that his failure to provide the Mexico Beach Police Department with his complete employment history was misleading even if the omissions did not rise to the level of affirmative false statements.

34. There is evidence that Respondent was less than candid with the five-member interview committee and with Chief Pollock in the subsequent one-on-one interview. However, the evidence is not clear and convincing that Respondent made affirmative oral false statements on either occasion. He admitted that he

had been disciplined by prior employers but was not asked specific questions, which would have revealed his unfavorable employment history.

35. On July 22, 1998, Petitioner entered a Final Order suspending Respondent's certification for twelve days and placing him on probation for two years. The Final Order states as follows in pertinent part:

The Respondent shall refrain from violating federal, state and local laws. If during the period of probation the Respondent violates any part of Chapter 943, Florida Statutes, or Title 11B, Florida Administrative Code, and is later found at a formal informal hearing (conducted within or beyond the probationary period) to have committed such a violation, then the Commission will revoke all of the Respondent's criminal justice certification and eligibility for certification.

Petitioner met its burden of proving that Respondent failed to comply with the terms and conditions of his probation when he made a false written statement regarding his prior work-related injuries on his November 12, 1998, application.

36. Rule 11B-27.005(5), Florida Administrative Code, states as follows in relevant part:

(5) When the Commission finds that a certified officer has committed an act which violates Section 943.13(7), F.S., it shall issue a final order imposing penalties within the ranges recommended in the following disciplinary guidelines:

\* \* \*

(b) For the perpetration by the officer of an act which would constitute any of the misdemeanor offenses, pursuant to Rule 11B-27.0011(4)(b), F.A.C., . . . the action of the Commission shall be to impose a penalty ranging from, probation of certification to revocation. Specific violations and penalties that will be imposed, absent aggravating or mitigating circumstances, include the following:

\* \* \*

4. False reports (. . . 837.06 . . .F.S.)  
Revocation

\* \* \*

(c) For the perpetration by the officer of an act or conduct, as described in Rule 11B-27.0011(4)(c), F.A.C., if such act or conduct does not constitute a crime, as described in paragraph (3)(a) and (b)[sic], of this rule, the action of the Commission shall be to impose a penalty ranging from the issuance of a reprimand to revocation. Specific violations and penalties that will be imposed, absent aggravating or mitigating circumstances, include the following:

\* \* \*

6. False statements. Probation of certification to revocation

37. The aggravating circumstances that apply here include, but are not limited to, the following: Respondent's multiple false written statements; Petitioner's prior disciplinary action against Respondent; and Respondent's non-compliance with the terms and conditions of his probation. Rules 11B-27.005(6)(e),

11B-27.005(6)(f), 11B-27.005(6)(g), and 11B-27.005(6)(t),  
Florida Administrative Code.

RECOMMENDATION

Based on the foregoing findings of fact and conclusions of  
law, it is

RECOMMENDED:

That Petitioner enter a final order revoking Respondent's  
certification.

DONE AND ENTERED this 21st day of September 2000, in  
Tallahassee, Leon County, Florida.

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SUZANNE F. HOOD  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 21st day of September, 2000.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.