



# Massachusetts POST Commission

84 State Street, Suite 200 Boston, MA 02114

May 28, 2024

James Fermin  
MPTC User ID 9999-9224  
Certification Number: FER-2024-9999-9224

c/o Attorney Walter Jacobs  
Walter Jacob and Associates at Law, L.L.C.  
795 Turnpike St.  
North Andover, MA 01845  
wjacobslaw@gmail.com

Via Electronic Mail

***Re: Petition for Executive Director Review – Case No. ED240502***

Dear Attorney Jacobs:

Pursuant to 555 CMR 7.10(1), I have reviewed the Peace Officer Standards and Training Commission's ("Commission's" or "POST's") Division of Police Certification's decision declining to grant James Fermin (the "Applicant") certification, as well as the submissions considered in connection with the same.

On November 16, 2023, the Chief of the Lawrence Police Department declined to attest to the Applicant's moral character and fitness for duty as a law enforcement officer, citing "significant concerns" regarding the Applicant's performance, including "lies relative to his former branch of service."

On March 13, 2024, the Division of Certification sent the Applicant a Notice of Denial of Recertification which stated, in relevant part: "[y]our agency has declined to attest that you are of good moral character and fit for employment in law enforcement."

On April 1, 2024, the Applicant submitted a petition for review by the Executive Director of the prior decision from the Division of Certification.

The following is a summary of the relevant events and correspondence:

1. On October 14, 2016, the Applicant was hired by the Lawrence Police Department as a full-time police officer. The Applicant was subsequently terminated on August 2, 2017, during a one-year probationary period following graduation from police academy due to “various documented instances of misconduct.” In the Notice of Termination, Mayor Rivera stated a “number of issues have arisen during your field training concerning your judgment and conduct prompting the City to take this action.” Exhibit 1 (170802).
2. Specifically, during the above-mentioned probationary period, the Lawrence Police Department documented the following infractions:
  - a. On January 10, 2017, Sergeant Mangan, the Field Training Officer Manager, documented “significant concerns” regarding the Applicant’s performance including: lies relative to his former branch of service (during his first roll call and during the academy); entering the booking area to “look at” detainees rather than observing them through booking photographs on three occasions after being told not to do so as it was unprofessional; using his phone or watch while working; arriving 30-45 minutes late to training on three consecutive days, and; exhibiting a bad attitude to a senior officer. Exhibit 2 (170110).
  - b. On May 3, 2017, the Applicant received a written reprimand for driving behavior and infractions (April 8<sup>th</sup> and April 28<sup>th</sup>) and violation of the pursuit policy (April 20<sup>th</sup>). Exhibits 3A (170503);3B (170110); 3C (170420).
  - c. On July 12, 2017, the Lawrence Police Department investigated allegations of untruthfulness or professional integrity violations and intimidating a witness made against the Applicant based on a complaint that the Applicant sexually harassed the victim of a domestic violence incident. Upon review of the letters filed by other officers, the Applicant, and the victim, the Captain Roy Vasque and Sergeant Amanda Burke did not find that officer Fermin sexually harassed the victim but did find that officer Fermin acted in an unprofessional manner towards her. Exhibit 4A (170712); 4B (170720).
3. On October 15, 2018, the Essex Superior Court denied the Applicant’s motion for reinstatement to the Lawrence Police Department, following the Applicant’s motion for judgment against Mayor Rivera and the City of Lawrence for wrongful termination, Essex Superior Court (C.A. No. 1877CV00061). Exhibit 5A (181015.1) and 5B (181015.2).

4. On August 17, 2020, the Applicant appealed the Essex Superior Court's decision to the Massachusetts Appeals Court (Case 2019-P-1547), which ultimately upheld the Superior Court's decision ruling in favor of the City and Mayor Rivera. Exhibit 6 (200817).
5. On December 31, 2020, Governor Baker signed into law Chapter 253 of the Acts of 2020 "*An Act Relative to Justice, Equity and Accountability in Law Enforcement in the Commonwealth.*" The act granted initial certification to all officers in the Commonwealth who are active as of July 1, 2021. The Applicant was not an active officer on that date.
6. On February 2, 2021, the Massachusetts Appeals Court ruled that the termination letter was sufficient and "identified observed characteristics" regarding the Applicant's judgment and conduct while employed as a probationary police officer with the Lawrence Police Department. Exhibit 7 (210202).
7. On June 13, 2022, the Lawrence Police Department received a complaint alleging that the Applicant physically and sexually abused a 12-year-old child. In a July 1, 2022 report authored by Lieutenant Rogers, Lieutenant Rogers determined that no further action was warranted due to insufficient probable cause. Exhibit 8 (220701).
8. On March 10, 2023, following graduation from a second police academy, the Applicant was sworn in as a police officer by Mayor DePena. The Applicant's swearing in was posted on Mayor DePena's social media account and included photographs of the Applicant in full police uniform. The Applicant, however, was not certified by POST and was subsequently placed in an administrative non-sworn function by the Lawrence Police Department but paid as a sworn police officer. On March 30, 2023, Lieutenant Raso, after a telephone conversation with POST Senior Certification Advisor Gina Joyce, informed senior officers and others via email, that the Applicant was to work in a non-sworn capacity only, as the Chief would not attest to the Applicant's fitness for duty in law enforcement. Exhibit 9 (230320).
9. On November 16, 2023, the newly appointed Acting Chief filed documents with POST regarding the Applicant's candidacy for new certification but stated in a cover letter that the Chief "cannot clearly and fairly attest to Mr. Fermin's good moral character and fitness for employment at this time." Exhibit 10A (231116.1).
  - a. On Page 3 of the same attestation packet, Section VI, Number 10, the Acting Chief stated, "I believe that the Candidate James Fermin does not possess good moral character and fitness for employment in law enforcement, and specifically as an officer with the above-named Agency." The Lawrence Police Department

requested POST conduct an independent review and render a determination as to the Applicant's fitness for duty. Exhibits 10A (231116.1); 10B (231116.2).

10. On November 22, 2023, POST was notified by the Lawrence Police Department that on November 19, 2023, the Applicant was involved in an altercation that resulted in his being pepper-sprayed, handcuffed, and detained by the Methuen Police Department ("the 2023 Incident"). The Applicant sent an email to Lieutenant Bonilla of the Lawrence Police Department regarding the 2023 Incident. In summary, the Applicant stated he was at [REDACTED]'s house when one of her [REDACTED] Jomer Fana [REDACTED] was involved in a struggle with her. The Applicant stated, "I ran outside and pushed [his] head in an attempt to redirect his attention off [her], but police were already on scene and pepper spray was deployed. I was hit with cross-contamination of the pepper spray due to my close proximity." Exhibit 12 (231122).
11. The Lawrence Police Department forwarded Methuen Police Department's reports and video camera footage of the 2023 Incident to POST. POST also reviewed a report by Officer Alaimo of the Methuen Police Department and determined that Officer Alaimo's statements contradicted the Applicant's statement to Lieutenant Bonilla. Officer Alaimo stated, in relevant part, "Officer Michael Diaz had multiple parties separated and advised that he had pepper sprayed multiple males that were fighting. Officer Diaz . . . advised another male (James Fermin) ran into the house." Officer Alaimo also stated, "I was advised that Officer Diaz had witnessed Mr. Fermin striking Mr. Fana in the face as he pulled up and that Mr. Fermin was currently in handcuffs in a cruiser." Officer Alaimo further reported, "I was advised by Officer Diaz that when he arrived Mr. Revi was struggling with Mr. Fana in the front yard and then Mr. Fermin ran out and started to strike Mr. Fana in the face from behind and this was when the males were pepper sprayed." Exhibit 13 (231119).
  - a. The Applicant's statement to Lieutenant Bonilla directly contradicts the information provided in Officer Alaimo's report, specifically the Applicant's account that he was pepper sprayed unintentionally by police and was simply hit with cross-contamination.
  - b. The Methuen Police Department's report was that the Applicant was engaged in the altercation and was intentionally pepper sprayed by police to stop his assault and battery on another person.
12. On March 13, 2024, POST issued a Notice of Denial of Certification to the Applicant based on the Chief's failure to attest to the Applicant's moral character and fitness as a law enforcement officer. Exhibit 14 (240313).

13. On [REDACTED] the Applicant was arraigned in [REDACTED] on criminal charges for [REDACTED] based on [REDACTED]. The case [REDACTED]. Exhibit 15 (240322).
14. On March 25, 2024, Mayor DePena issued a Notice of Intent to Terminate Employment to the Applicant. Mayor DePena stated, “[t]he evidence against you is very compelling and disturbing. In addition, your written account and statements concerning the incident to the Methuen Police and Lawrence Police Department were misleading, inaccurate and untruthful.” The document further stated, “[o]n November 20, 2023, you wrote an untruthful email to Lawrence Police Lieutenant, Melix Bonilla, regarding your involvement in the incident” and “Methuen Police reports and body-camera video contradict your version of the incident.” Exhibit 16 (240325).
15. On April 1, 2024, the Applicant filed a request to POST for reconsideration and review by the Executive Director for certification. Exhibit 17 (240401)
16. On April 2, 2024, POST Division of Certification Director Steven Smith responded to the Applicant’s attorney, Walter Jacobs, copying the Applicant, requesting any supportive documentation regarding the request for review. They were instructed to submit the information to POST by April 8, 2024. Exhibit 18 (240402.1).
17. Attorney Walter Jacobs confirmed receipt of the request on April 2, 2024. To date, no additional documentation has been received by POST. Exhibit 19 (240402.2).
18. On April 12, 2024, the Applicant appeared for a Termination Hearing. The Applicant was ultimately terminated based on his actions during the 2023 Incident, and the false statements the Applicant subsequently made to police regarding the same. Mayor DePena signed the Notice of Termination of Employment, which was hand-delivered to the Applicant on May 1, 2024. The letter addressed the Applicant as an officer, though the Applicant did not work in an official sworn capacity during his second employment with Lawrence Police Department. Exhibit 20 (240501).
19. The Applicant’s complete disciplinary history, submitted to POST by Lawrence Police Department pursuant to Section 99 of *An Act Relative to Justice, Equity and Accountability in Law Enforcement in the Commonwealth*, St. 2020, c. 253, resulted in two separate terminations: one while employed as a police officer during his probationary period and one while employed as a civilian. At no time was the Applicant certified by POST, statutorily or otherwise.

The Division of Police Certification required a written reply of any supporting documentation by April 8, 2024. Neither the Applicant or his attorney submitted additional documentation.

### Determination

#### Good Moral Character and Fitness for Employment as a Law Enforcement Officer

POST's enabling statute sets forth minimum certification standards, which include "being of good moral character and fit for employment in law enforcement, as determined by the Commission." M.G.L. c. 6E, § 4(f)(1)(viii), (ix). POST's regulation at 555 CMR 7.05 describes the standards for "Determination of Good Character and Fitness for Employment." Specifically, 555 CMR 7.05 (4) states in part that

*"...unless there have been allegations that the officer has engaged in multiple instances of similar or related misconduct, neither the employing agency nor the division of certification shall consider an allegation of a particular matter, where ... (c) the officer has complied or is in the process of complying with any disciplinary action or other adverse decision by an authority and (d) the alleged misconduct did not result in either a disciplinary proceeding or court action."*

Regarding the following incidents:

- 1) Termination as a police officer from Lawrence Police Department on August 2, 2017, for failure to successfully complete his probationary period.

The termination of employment as a police officer on August 2, 2017 during the probationary period included multiple findings of unprofessionalism. Although the applicant appealed that termination, a superior court and later an appeals court, sustained those findings. Subsequently, the Applicant completed a second police academy on March 10, 2023. These events taken together would substantiate the notion that the Applicant complied with the disciplinary action.

- 2) Termination from employment in a civilian capacity from Lawrence Police Department on May 1, 2024, following an incident resulting in a criminal charge of [REDACTED] and the Applicant's untruthfulness surrounding the matter.

There Applicant's versions of the events are in direct conflict with the reports from the Methuen Police Department. The Lawrence Police Department found that the Applicant was untruthful regarding the 2023 Incident in his report via email to the Department. This resulted in the second termination of the Applicant from the Lawrence Police Department. Furthermore, the alleged misconduct has resulted in disciplinary action in court given the [REDACTED] criminal charges of [REDACTED]. Notwithstanding the fact that the applicant

is in the process of complying with the discipline that may come from these criminal charges, the events underlying the termination from May 1, 2024 can be considered given that they have resulted in a proceeding before a court.

M.G.L. Chapter 6E, Section 1 defines “untruthful” or “untruthfulness” as knowingly making an untruthful statement concerning a material fact or knowingly omitting a material fact: (i) on an official criminal justice record, including, but not limited to, a police report; (ii) while testifying under oath; (iii) to the commission or an employee of the commission; or (iv) during an internal affairs investigation, administrative investigation or disciplinary process. I find that that there are multiple instances in which the applicant has been less than forthcoming, and these constitute multiple instances of similar or related misconduct.

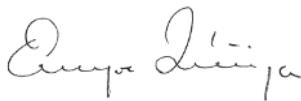
Based on my review of the Applicant’s petition and all the information before me, I have determined that the Applicant has engaged in multiple instances of similar or related misconduct. While it is true that the applicant has complied with the initial disciplinary action (termination from employment on August 2, 2017) and may in the process of complying with the second discipline (termination of employment on May 1, 2024), the multiple events underlying those two terminations can be taken together and constitute multiple allegations of similar or related misconduct.

I find that the Division of Certification has correctly applied the regulations in their determination that the Applicant lacks the necessary good moral character and fitness for duty as a police officer.

\* \* \*

Based on my review, **I have decided to issue a determination affirming the initial decision of the Division of Police Certification.**

POST reserves the ability to revisit the matter of the Applicant’s certification if it receives new information that paints a materially different picture of the facts in accordance with 555 CMR 7.09.



\_\_\_\_\_  
Enrique Zuniga

Executive Director

May 28, 2024

\_\_\_\_\_  
Date