

The POST received notification from Smyrna Police Department (“SPD”), dated April 25, 2024, indicating that officer Jason R. Baker (“Baker”): resigned from SPD; received or waived a hearing under the Police Officer’s Bill of Rights (11 *Del. C.* § 9203); and resigned prior to entry of findings concerning an alleged breach of internal discipline for which Baker could have been terminated. This Hearing Board (the “Board”) was convened and met on August 22, 2024.

SUMMARY OF THE EVIDENCE

SPD submitted to the Board two exhibits labeled Smyrna-1 and Smyrna-2. Smyrna-1 is an SPD memorandum from Sgt. Brandon Dunning of SPD to the Executive Director of the Criminal Justice Council, dated March 25, 2024, appearing to summarize SPD’s investigation of Baker. Smyrna-2 is a compilation of records submitted by SPD relating to its investigation of Baker. These records were submitted without objection. Baker submitted no exhibits. SPD also provided testimonial evidence from its current internal affairs officer, Sgt. Brandon Dunning (“Dunning”), Lt. Donner, and, briefly, through Chief James. Baker did not testify on his own behalf.

FINDINGS OF FACT

The following factual findings are made by the Board based upon the testimony presented and after a review and consideration of the records submitted by SPD.

On the evening of Saturday, November 20, 2021, and while off-duty, Baker and others were patronizing a pub in Middletown Delaware. After three hours of drinking at the pub, where Baker is observed consuming what appears to be six beers and four shots, Baker is seen leaving the pub with a beer bottle in hand. Baker entered his car and drove to another officer’s residence in Middletown, arriving around 1:18 a.m. on November 21. He departed this residence and then collided with an unoccupied parked vehicle in the neighborhood, causing extensive front-end damage to his vehicle, as well as damaging the parked vehicle. Baker drove off.

Hours later, a NCCPD officer on patrol noticed Baker's vehicle being towed. After investigating the matter, he determined it was Baker's vehicle. Baker's mother apparently contacted the tow company to remove the vehicle from the street. The NCCPD officer was then dispatched to the residence of the owner of the struck vehicle. The officer determined that it was Baker's vehicle that struck this vehicle. Additional officers thoroughly investigated the accident and collected various pieces of evidence, including statements of residents who said they had heard a loud crash, then heard a vehicle accelerate and what sounded like a vehicle dragging something underneath as it drove off.

At 11:30 a.m. on November 21, 2021, Baker contacted his supervisor, Lt. Donner, to report the incident. Baker told Donner he fell asleep and that he was unsure of what he hit but thought it might have been a dumpster. He also indicated that he became distracted by his GPS. He said he called his sister to pick him up and that his sister arranged for Baker's vehicle to be towed. He told Donner that NCCPD reached out to his mother and told her Baker's vehicle was going to be seized as evidence in its investigation. NCCPD investigation also revealed that Baker's glove compartment had been emptied.

NCCPD officers interviewed Baker at his home later that afternoon. Baker told the officers that Baker was going to his girlfriend's house and that a deer came out and he struck something. He then said he hit a dumpster. Later in the interview, Baker acknowledged that he hit the car. Baker mentioned that he had texted his sister about the matter, and when asked about seeing the messages, Baker informed the officers that he had deleted those text messages. Smyrna-2, March 8, 2024, Memorandum ("3/8/24 Mem."), page 7 of 21. Baker then refused the officers' request to see his call history. *Id.*

Dunning also testified that during his investigation, which included an interview of Baker's girlfriend, he learned that Baker may have been involved in several domestic violence incidents with his girlfriend. In one incident, Baker allegedly threw a beer can at her. She did not report these alleged incidents to the police and ultimately no criminal charges were brought against Baker. Dunning did not believe that charges were appropriate based upon the evidence he was able to obtain prior to Baker's resignation. Dunning's testimony was provided with no objection.¹

Dunning completed his internal affairs investigation as of March 8, 2024. He sustained six of the seven charges asserted by SPD against Baker, including several charges pertaining to honesty. *See* 3/8/24 Mem. at pp. 17-22 (sustaining all charges pertaining to the accident, reporting, and criminal charges, but not sustaining charge relating to domestic incidents). Among other things, Dunning sustained the charge of Conduct Unbecoming based on the totality of the circumstances, which included Baker operating a vehicle seemingly intoxicated, causing an accident, leaving the scene of the accident, and then causing to have his vehicle towed from the area. The memorandum concluded that Baker was dishonest in the criminal investigation and attempted to tamper with physical evidence (text messages, phone calls) that would have linked him to the accident. *Id.* at p. 18; *see also* Audio of 8.22.24 Hearing at approx. 1:29-1:33.

Baker did not testify or present any defense or case before this Board. In fact, Baker, through counsel, objected to the Board asking Baker any questions, taking the position that SPD had rested and Baker rested without putting on a case, making it procedurally improper for the Board to ask Baker questions. Following a break, the Board chose not to ask Baker any questions. As the Board put on the record, it was not conceding (and therefore not setting any precedent) that

¹ The statement from the girlfriend and others (all included in Smyrna-2 and admitted without objection), albeit hearsay, contains extremely concerning accusations of domestic violence.

a POST Board is unable to ask a respondent-officer questions under the circumstances presented to this Board.²

Baker ultimately did not have a Criminal Justice Council hearing. Rather, he resigned prior to the scheduling of a hearing required under the now-titled Police Officer Due Process, Accountability and Transparency Act, or 11 *Del. C.* Chapter 92 (formerly, the Law Enforcement Officer Bill of Rights).

CONCLUSIONS OF LAW

11 *Del. C.* § 8404(a)(4)(e) provides that POST shall suspend or revoke certification where an officer has: (1) received an administrative hearing under Chapter 92 of Title 11 or has knowingly and voluntarily waived that individual's right to such a hearing; and (2) has either (a) been terminated for a breach of internal discipline or (b) resigned prior to the entry of factual findings concerning an alleged breach of internal discipline for which the individual could have been terminated. POST has jurisdiction over this certification matter since Baker resigned after having received notification of charges for possible breach of internal discipline.

In addition to the other relevant subsections of 11 *Del. C.* § 8404(a)(4), POST has historically reserved suspension and decertification for cases under subsection (a)(4)(e) where an officer's misconduct implicates honesty and integrity or where an officer's conduct places the public or fellow officers at risk of harm. Here, this Board finds that substantial evidence supports a finding relating to both interests. The Board's primary concern regards his conduct on November

² Administrative boards are not constrained by the rigid evidentiary rules that govern jury trials. *Bethel v. Bd. of Educ. of Cap. Sch. Dist.*, 985 A.2d 389 (TABLE), 2009 WL 4545208, at *3 (Del. Dec. 5, 2009). Rather, the agency may hear "all evidence which could conceivably throw light on the controversy." *Id.* (cleaned up).

20-21, 2021.³ Baker not only drank numerous alcoholic beverages before driving his vehicle and getting into an accident (in and of itself, very concerning conduct for a Delaware police officer), but the evidence also shows that Baker appeared to take several actions to cover up his criminal conduct. He failed to report the accident, he fled the scene, he caused family members to have his vehicle towed from the neighborhood, and he made what was at best (for him) several misleading and inconsistent statements to investigating officers as to what truly happened (including initially denying being intoxicated). Baker was either lying about what he hit or was too intoxicated to know. Either scenario is disturbing. On top of all of this, Baker appeared to clear out his glove compartment, delete relevant text messages and refuse to provide additional relevant evidence to investigating officers. The totality of this conduct warrants decertification.

People, including police officers, make mistakes. Had Baker committed the offense of driving while intoxicated and cooperated with all involved, this Board may have recommended a suspension of certification. Here, however, the substantial evidence supports much more unfortunate findings regarding honesty and integrity, in addition to a concern for public safety. Baker is fortunate he did not hit an occupied vehicle. But he did act in a way not becoming of a Delaware police officer.

³ At the hearing before this Board, there was evidence submitted and argument made regarding the length of time it took between the November 2021 incident and the ultimate conclusion of SPD's internal investigation leading to Baker's resignation. The evidence showed that there were multiple causes of delay, including the length of time that the criminal investigation took place, which itself involved personnel issues not attributable to SPD and included some time for the negotiation of a plea, personnel moves within SPD's internal affairs department, as well as the fact that the investigation continued to evolve with the criminal matter and other information learned from the recently assigned investigator. The Board does not find that any delay in the investigation was attributable to SPD or otherwise resulted in prejudice to Baker in this proceeding (nor was there any argument made to the contrary). Regardless, this Board's focus is on the conduct and the evidence that was brought before this Board and not on the length of time the matter took to reach POST.

RECOMMENDATION

Based on the Hearing Board's findings of fact and the record in this matter, the Board unanimously recommends to the full POST that Jason R. Baker be decertified as a Delaware police officer.

/s/ Thomas Johnson
Chief Thomas Johnson
Presiding Officer

/s/ Franklin Cooke
Rep Franklin Cooke
Member

/s/ Robert Irwin
Director Robert Irwin
Member

Dated: September 23, 2024