IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

EDWARD J. SOMMERS, Appellant, v. POLICE OFFICER STANDARDS AND TRAINING COMMISSION, Appellee.	))))))))))	C.A. No. N25A-12-004 CLS

Date Submitted: June 1, 2026
Date Decided: September 18, 2026

MEMORANDUM OPINION

On Appeal from the Police Officer Standards and Training Commission,
REVERSED and REMANDED

Mark A. Denney, Jr., Esquire of BROCKSTEDT MANDALAS FREDERICO LLC, *Attorney for Appellant*.

Joseph C. Handlon, Deputy Attorney General of the DELAWARE DEPARTMENT OF JUSTICE, *Attorney for Appellee.*

SCOTT, J.

INTRODUCTION[1]

This matter comes before the Court on appeal by former Elsmere Bureau of Police ("EBP")[2] patrolman Edward J. Sommers from a decision of the Police Officer Standards and Training Commission ("POST" or the "Commission") to revoke his certification as a law enforcement officer. Mr. Sommers contends that POST lacked jurisdiction to decertify him because he neither received nor waived an administrative hearing as provided under Title 11, Chapter 92 of the Delaware Code, commonly referred to by its former name, the "Law Enforcement Officer's Bill of Rights" ("LEOBOR").[3] Mr. Sommers argues POST erred in finding he had, "effectively waived his right to a LEOBOR Hearing,"[4] and was therefore subject to

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[1] Citations in the form of "D.I. __" refer to docket items. Citations in the form of "B.D. __" refer to page numbers of the October 24, 2025, written decision of the three-member board (the "Board") appointed by the Police Officer Standards and Training Commission ("POST"). The Court notes the Board Decision and POST documents are labeled "Exhibits 1-8" in the Certified Record. Citations in the form of "[Proponent] Ex. __" refer to exhibits introduced by Mr. Sommers (26-34) or the Elsmere Bureau of Police ("EBP") (9-25) before the Board and included in the Certified Record. The Court notes exhibit numbers referred to in the Board Decision are not cross-referenced with those in the record and citation to the record is by section number only as the record does not have continuous pagination. POST separately submitted to the Court a Supplemental Discovery Filing of exhibits identified by letter that were "inadvertently omitted" from the original Certified Record. These items are cited "S.D. __." The Court notes many items or portions of items appear in more than one location; the Court has cited to the original Certified Record wherever possible for consistency. An audio recording of the Police Officer Standards and Training Commission Board Hearing held in person at Dover, Delaware on October 8, 2025, is not cited due to poor sound quality. No transcript of the proceedings was provided.

[2] Referred to as the Elsmere Police Department ("EPD") throughout the decision.

[3] The Court notes Chapter 92 is now entitled "Police Officers' Due Process, Accountability, and Transparency" ("PODAT") but the record in this case uses LEOBOR almost exclusively.

[4] See 11 *Del. C.* § 9203. The Court notes the LEOBOR Hearing is also referred to as a "Chapter 92 hearing" or a Criminal Justice Council ("CJC") Hearing in various parts of the record.

POST's jurisdiction for action on his law enforcement certification.[5] For the reasons set forth below, the Court finds the Commission erred as a matter of law in finding Mr. Sommers waived his right to a LEOBOR Hearing. Therefore, the Court **REVERSES** POST's decision to decertify Sommers and **REMANDS** the matter for proceedings consistent with this Opinion.

I. FACTUAL AND PROCEDURAL BACKGROUND

Edward J. Sommers completed police academy training in August of 2024 and field training with the Elsmere Bureau of Police at the end of December 2024.[6] When he began patrolling independently, Mr. Sommers struggled and was returned to field training for a period of time in early 2025.[7] Between February 2025 and July 2025, Mr. Sommers was the subject of five (5) Internal Affairs (IA) investigations captioned IA25-02, IA25-03, IA25-04, IA25-05, and IA25-06.[8] Mr. Sommers was substantiated and disciplined as a result of IA25-02, IA25-03, and IA25-04.[9] IA25-03 was the subject of a LEOBOR Hearing held in Elsmere, Delaware on May 28, 2025, at which Mr. Sommers was represented by present counsel.[10] Investigations IA25-05 and IA25-06 led to Mr. Sommers's separation from EBP and POST's

[5] B.D. 9-10.
[6] B.D. 4.
[7] B.D. 8.
[8] EBP Exs. 16, 15, 14, 13, and 12.
[9] B.D. 8.
[10] Ex. 15.

subsequent decertification of Mr. Sommers, which is the subject of the instant appeal.

On July 21, 2025, Mr. Sommers was on suspension and failed to appear for an IA interview regarding IA25-06 for which Mr. Sommers's current counsel appeared; an EBP officer located Mr. Sommers at his home and Mr. Sommers appeared later that day with counsel.[11] The investigation captioned IA25-05, which had been tried internally on July 3, 2025, and the investigation captioned IA25-06 both resulted in substantiated counts of disciplinary breaches.[12] On July 22, 2025, EBP Chief Laura Giles ("Chief Giles") sent Mr. Sommers a letter terminating his employment for breach of internal discipline.[13] Chief Giles's letter makes no mention of a LEOBOR Hearing but states, "Per the Collective Bargaining Agreement, you may have rights and should consult with your union representation."[14] There is no evidence as to whether Mr. Sommers contacted his union. It is undisputed that Chief Giles failed to offer Mr. Sommers a LEOBOR Hearing and that Mr. Sommers neither explicitly waived nor requested a LEOBOR Hearing.

[11] B.D. 3.
[12] B.D. 4.
[13] EBP Ex. 11.
[14] EBP Ex. 11. *Id.*

On July 23, 2025, a third party, Mr. Sommers's father, texted Chief Giles, "No opportunity to resign?" and Chief Giles responded by text that she would remove the termination letter from Mr. Sommers's file if he resigned within 24 hours.[15] Mr. Sommers resigned on July 24, 2025 in a letter composed by present counsel and entitled "Voluntary Resignation of Edward Sommers following conclusion of all internal discipline imposed," (the "Resignation Letter").[16] That letter states:

> My client, Edward Sommers, understands that all investigations into his alleged conduct during his time with the Elsmere Bureau of Police (internal and otherwise) have concluded. My client further understands that no additional investigations into his conduct are open, pending, or forthcoming, and that any findings of fact related to his conduct have now been entered, with discipline imposed. [17]
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> …Please know that Edward Sommers' resignation is irrevocable and deemed accepted on receipt.[18]

Chief Giles acknowledged receipt and acceptance of the Resignation Letter on July 24, 2025.[19]

In its decision, the Board described three (3) Notification of Employment Status Change ("Notice") forms received by POST from EBP.[20] The first Notice, dated July 22, 2025 (the "July Notice"), characterizes Mr. Sommers's separation from EBP as a termination for breach of internal discipline for which he may be

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[15] D.I. 8, Ex. 2.
[16] EBP Ex. 10.
[17] *Id.*
[18] *Id.*
[19] S.D. D.
[20] B.D. 2.

subject to decertification or suspension by Post.[21] It is signed by Chief Giles, but not by Mr. Sommers.[22] The words "Refused to Sign" are handwritten on the employee signature line.[23] Though the form calls for a representation regarding the receipt or waiver of a LEOBOR Hearing, that checkbox is left blank.[24] The second Notice, marked effective July 24, 2025, and dated September 23, 2025 (the "September Notice"), characterizes Mr. Sommers's separation from EBP as a resignation and includes a checkmark in the box indicating that Mr. Sommers received a LEOBOR Hearing or "knowingly and voluntarily waived" his right to such a hearing.[25] The September Notice is signed by Chief Giles and marked "N/A" on the employee signature line.[26] At the POST Hearing, the Commission received a third Notice, also dated July 22, 2025 (the "October Notice"), which indicates Mr. Sommers both resigned and was terminated.[27] The October Notice does not appear to have been put into evidence. The Board characterized the EBP forms as "confusing."[28]

POST included its official correspondence addressed to Mr. Sommers in the Commission's Certified Record. In response to the July Notice, Post sent a letter

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[21] POST Ex. 5.
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] POST Ex. 6.
[26] *Id.*
[27] B.D. 2.
[28] *Id.*

dated July 23, 2025 (the "July POST Letter"). to Mr. Sommers informing him that his termination after a LEOBOR Hearing or knowing and voluntary waiver of such hearing is grounds for decertification and apprising him of the procedure for requesting a POST Hearing.[29] In a letter dated August 25, 2025, (the "August POST Letter") the Commission acknowledged Mr. Sommers's request for a hearing and notified him that the Board Hearing was scheduled for October 8, 2025.[30] In a letter dated October 9, 2025 (the "October POST Letter") the Commission notified Mr. Sommers that the Hearing Board had recommended revocation of his POST certification and notified him that he could attend a November 18, 2025, meeting at which that recommendation would be presented to the full Commission.[31] In a letter dated November 20, 2025 (the "November POST Letter"), POST informed Mr. Sommers the Commission had voted unanimously to accept the recommendation of the Hearing Board to decertify him as a police officer.[32] The November POST Letter instructed Mr. Sommers that as of November 18, 2025, he could no longer exercise any police powers in the State of Delaware, and apprised him of his right to the instant appeal.[33] In a letter dated December 22, 2025 (the "December POST Letter"), POST corrected an error in the November POST Letter and informed Mr. Sommers

[29] POST Ex. 4.
[30] POST Ex. 7.
[31] POST Ex. 8.
[32] POST Ex. 2.
[33] *Id.*

that the Commission's vote was not unanimous but fourteen (14) to one (1) in favor of his decertification.[34] Mr. Sommers now appeals the Commission's decision.

II. PARTIES' CONTENTIONS

The parties agree that POST's jurisdiction to act on Mr. Sommers's law enforcement certification is the sole issue in dispute, and that whether Mr. Sommers waived a LEOBOR Hearing is the dispositive question in determining whether the Commission had jurisdiction. POST does not dispute that EBP failed to offer or schedule a LEOBOR Hearing on IA25-06. Mr. Sommers does not dispute that the breaches of internal discipline alleged by EBP could have resulted in his termination.

Mr. Sommers maintains that he did not waive his right to a LEOBOR Hearing.[35] Mr. Sommers relies on the assertion made in his Resignation Letter and accepted by Chief Giles on behalf of EBP that, "…no additional investigations into his conduct are open, pending, or forthcoming, and…any findings of fact related to his conduct have now been entered, with discipline imposed."[36] Mr. Sommers argues that EBP's acceptance of these terms led him to believe the matter was closed, so he had no cause to expect and therefore to accept or waive a LEOBOR Hearing.

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[34] POST Ex. 3.
[35] *See generally* Edward J. Sommers's Opening Brief ("Opening Br."), D.I. 8; Edward J. Sommers's Reply Brief ("Reply Br.") D.I. 14.
[36] EBP Ex. 10.

The Commission maintains that Mr. Sommers waived his right to a LEOBOR Hearing by negotiating his resignation in lieu of termination and by failing to request a LEOBOR Hearing. POST found that Mr. Sommers, who was represented by counsel and who had a LEOBOR Hearing on IA25-03 in May of 2025, knew that he had a right to a LEOBOR Hearing and could have requested one but chose to resign instead of defending the EBP charges against him. The POST Decision states:

> The Board concludes, under these circumstances, and considering all of the evidence before the Board, that, by resigning in the face of charges, and having not inq2uired or pursued a LEOBOR Hearing, Sommers effectively waived his right to a LEOBOR Hearing. An implied waiver, under these circumstances, suffices to trigger POST's jurisdiction and ability to consider possible action on his certification.

The Commission asserts that Mr. Sommers's resignation and failure to assert his right to dispute the EBP charges against him constitute a waiver of a LEOBOR Hearing.

III. STANDARD OF REVIEW

Unless otherwise directed by statute, administrative appeals are subject to substantial evidence review.[37] Under this standard, the Court's "function is limited to a determination of whether there was substantial evidence to support the [administrative body's] findings, and whether they are free from legal error.[38]

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[37] *Maurer v. Council on Police Training*, 2007 WL 625903, at *3 (Del. Super. Jan. 26, 2007).
[38] *Thompson v. Christiana Care Health Sys.*, 25 A.3d 778, 781-82 (Del. 2011) (citing *Unemployment Ins. Appeal Bd. V. Duncan*, 337 A.2d 308, 308 (Del. 1975); *Straley v. Advance Staffing, Inc.*, 984 A.2d 124, 2009 WL 3451913, at *2 (Del. Oct. 27, 2009) (TABLE)).

Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion"[39]—it "falls somewhere between a scintilla and a preponderance of the evidence."[40] It is not the Court's role to "independently weigh the evidence, determine questions of credibility, or make its own factual findings, but rather, to 'view the record in the light most favorable to the prevailing party below.'"[41] The Court "reviews questions of law, including claimed constitutional violations and the interpretation of statutes and regulations, *de novo*."[42] When conducting *de novo* review of an agency's statutory interpretation, the Court's purpose is to "determine and give effect to the legislature's intent."[43]

IV. DISCUSSION

A. POST's Statutory Jurisdiction

Under 11 *Del. C.* § 8404(a)(4)(e) the Police Officer Standards and Training Commission shall suspend or revoke a law enforcement officer's certification when:

> A police officer has received a hearing pursuant to Chapter 92 of this title, or who has knowingly and voluntarily waived that

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[39] *Baxter v. Verizon Commc'ns*, 2024 WL 3581660, at *3 (Del. Super. July 30, 2024). (quoting *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981)).
[40] *Diamon Fuel Oil v. O'Neal*, 734 A.2d 1060, 1062 (Del. 1999) (citing *Breeding v. Contractors-One-Inc.*, 549 A.2d 1102, 1104 (Del. 1988)).
[41] *United Parcel Serv. v. Willis*, 2024 WL 5039034, at *6 (Del. Super. Dec. 6, 2024) (citing *Kelley v. Perdue Farms*, 123 A.3d 150, 153 (Del. Super. 2015); *Wyatt v. Rescare Home Care*, 81 A.3d 1253, 1258–59 (Del. 2010)).
[42] *Stanford v. Merit Emp. Rels. Bd.*, 2012 WL 1549811, at *3 (Del. Super. May 1, 2012) (citing *Avallone v. DHSS et al.*, 14 A.3d 566, 570 (Del. 2011); *Ward v. Dep't of Elections*, 977 A.2d 900 (Del. 2009)).
[43] *Eliason v. Englehart*, 733 A.2d 944, 946 (Del. 1999) (citing *Street v. State*, 699 A.2d. 9, 12 (Del. 1995)).

> individual's right to such a hearing and has done any of the following:
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> 1. Been discharged from employment with a law-enforcement agency for a breach of internal discipline.
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> 2. Retired or resigned prior to the entry of findings of fact concerning an alleged breach of internal discipline for which the individual could have been legitimately discharged had the individual not retired from or resigned that individual's position prior to the imposition of discipline by the employing agency.[44]

The Court finds that the plain language of the statute is unambiguous. Absent a LEOBOR Hearing, an officer must knowingly and voluntarily waive his right to a LEOBOR Hearing before he can be subjected to POST jurisdiction for suspension or revocation of his law enforcement certification under 11 *Del. C.* § 8404(a)(4)(e).

B. The Doctrine of Waiver Under Delaware Law

The doctrine of waiver operates in equity as well as in criminal, civil, and administrative law. In analyzing a school district's waiver of immunity in a tort case, the Delaware Supreme Court helpfully synthesized the applicable law of waiver:

> It is well settled in Delaware that a party may waive her rights. But, the standards for proving waiver under Delaware law are "quite exacting." "Waiver is the voluntary and intentional relinquishment of a known right." "It implies knowledge of all material facts and an intent to waive, together with a willingness to refrain from enforcing those [ ] rights." We also have explained that "[t]he facts relied upon to prove waiver must be unequivocal." Applying those principles, we have required a party claiming waiver to show three elements: (1) that "there is a requirement or condition to be waived," (2) that "the waiving party

[44] 11 *Del. C.* § 8404(a)(4)(e).

must know of the requirement or condition," and (3) that "the waiving party must intend to waive that requirement or condition."[45]

C. The Elements of Waiver in the Instant Case

Here, the evidence shows and the parties agree that the requirement to be waived is the right to a LEOBOR Hearing; thus, the Court finds the first element of waiver is met.

The Court finds the second element of waiver, that Mr. Sommers knew of the requirement to be waived, is not met. POST concluded that Mr. Sommers had reason to know of his right to a LEOBOR Hearing because he had recently exercised that right. Mr. Sommers was represented by present counsel at a LEOBOR Hearing on investigation IA25-03 on May 28, 2025, so he was aware of such hearings generally. However, no evidence in the record shows that Mr. Sommers had reason to know of his right to a LEOBOR Hearing on investigation IA25-06. On the contrary, Mr. Sommers had reason to believe that the terms of his resignation foreclosed the possibility of a right to a LEOBOR Hearing. Under 11 *Del. C.* § 9203 a LEOBOR Hearing is required if an officer is suspended or subject to disciplinary action.[46] Mr.

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[45] *Bantum v. New Castle Cnty. Vo-Tech Educ. Ass'n*, 21 A.3d 44, 50–51 (Del. 2011) (first citing *AeroGlobal Capital Mgmt., LLC v. Cirrus Indus., Inc.*, 871 A.2d 428, 444 (Del.2005); then quoting *Am. Family Mortg. Corp. v. Acierno*, 640 A.2d 655, 1994 WL 144591, at *5 (Del.1994) (TABLE); then quoting *Realty Growth Investors v. Council of Unit Owners*, 453 A.2d 450, 456 (Del.1982); and then citing *Pepsi–Cola Bottling Co. v. Pepsico, Inc.*, 297 A.2d 28, 33 (Del.1972)).

[46] 11 Del. C. 9203 provides:

If a law-enforcement officer is:

(1) Suspended for any disciplinary reason; or

Sommers could not be suspended from a position he no longer held. Mr. Sommers had reason to believe the terms of his Resignation Letter as accepted by Chief Giles on behalf of EBP were operative. The Resignation Letter states that "no additional investigations into [Mr. Sommers's] conduct are open, pending, or forthcoming, and…any findings of fact related to his conduct have now been entered, with discipline imposed."[47] Therefore, Mr. Sommers had reason to believe he would not be subject to disciplinary action by his former employer. Absent the possibility of suspension or disciplinary action, Mr. Sommers would have no right to a LEOBOR Hearing. Under the circumstances, Mr. Sommers did not have reason to know that he had such a right. Under Delaware law, one cannot waive a right one does not know one has. The Court finds the second element of waiver is not met.

The Court finds the third element of waiver, that Mr. Sommers intended to waive a LEOBOR Hearing, is not met. POST concluded that Mr. Sommers voluntarily waived a LEOBOR Hearing by failing to request one. Under 11 *Del. C.*

> (2) Charged with conduct alleged to violate the rules or regulations or general orders of the agency that employs the officer; or
> (3) Charged with a breach of discipline of any kind, which charge could lead to any form of disciplinary action (other than a reprimand) which may become part of the officer's permanent personnel record,
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> then that officer shall be entitled to a hearing which shall be conducted in accordance with this chapter unless a contractual disciplinary grievance procedure executed by and between the agency and the bargaining unit of that officer is in effect, in which case the terms of that disciplinary grievance procedure shall take precedence and govern the conduct of the hearing.

[47] EBP Ex. 10.

§ 9204 there is no provision for requesting a LEOBOR Hearing; rather, the statute instructs that an officer entitled to a hearing be given written notice of it.[48] Under no circumstances could a failure to request a LEOBOR Hearing result in waiver of a right to that hearing. Further, as described above, Mr. Sommers did not have reason to know he had a right to a LEOBOR Hearing. Absent such a right, Mr. Sommers would have no reason to request a hearing. Under Delaware law, Mr. Sommers's failure to exercise a right he did not know he had cannot indicate an intention to waive that right. The Court finds the third element of waiver, intent, is not met.

The Commission erred as a matter of law by failing to apply the elements of waiver under Delaware law. The Court holds that POST failed to establish that Mr. Sommers waived his right to a LEOBOR Hearing. Therefore, POST did not have jurisdiction under 11 *Del. C.* § 8404(a)(4)(e) to revoke or suspend Mr. Sommers's certification as a law enforcement officer for resigning under these circumstances.

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[48] 11 *Del. C.* § 9204 provides:

> In the event an officer is entitled to a hearing, a hearing shall be scheduled within a reasonable period of time from the alleged incident, but in no event more than 45 days following the conclusion of the internal investigation, unless waived in writing by the charged officer. The officer shall be given written notice of the time and place of the hearing and the issues involved, including a specification of the actual facts that the officer is charged with having committed; a statement of the rule, regulation or order that those facts are alleged to violate; and a copy of the rule, regulation or order. The charge against the law-enforcement officer shall advise the officer of the alleged facts and that the violation of the rule constituted a basis for discipline, and shall specify the range of applicable penalties that could be imposed.

V. CONCLUSION

For the foregoing reasons, the decision of the Police Officer Standards and Training Commission to decertify Edward J. Sommers as a police officer is **REVERSED** and **REMANDED** for proceedings consistent with this decision.

IT IS SO ORDERED.

/s/ Calvin Scott
Judge Calvin L. Scott, Jr.

BEFORE A THREE-MEMBER HEARING BOARD
SELECTED BY THE POLICE OFFICER
STANDARDS AND TRAINING COMMISSION

IN THE MATTER OF:)
EDWARD SOMMERS)
)

After due notice of time and place, this matter came before a Hearing Board selected by the Police Officer Standards and Training Commission ("POST"), under the authority of 11 *Del. C.* § 8404(a)(4), on October 8, 2025, at the Delaware State Police Museum, 2nd floor, 1441 N. DuPont Highway, Dover, DE 19903.

PRESENT:

Robert Irwin, Dir. Special Investigation,
Delaware Department of Justice,
Presiding Officer

Mark Farrall, Chief,
Newark Police Department,
Member

Nick Smith, Mayor,
Clayton,
Member

Joseph C. Handlon, Deputy Attorney General,
Legal Counsel to the Board

APPEARANCES:

Laurel Giles, Elsmere Police Department, Chief

John Mitchell, Elsmere Police Department, Detective

Scot A. Sowden, Elsmere Police Department, Master Corporal

Allyson M. Britton, Esq. representing Elsmere Police Department

Mark Denney, Esq., representing Edward Sommers

ALSO PRESENT:

Sean Moriarty, POST Executive Director

Ameshia Bucknor, POST Administrator

Charles Emory, POST Investigator

POST received two Notification of Employment Status Change forms from the Elsmere Police Department ("EPD"). The first one is dated July 22, 2025, and indicated to POST that former officer Edward Sommers ("Sommers") was terminated from EPD for breach of internal discipline and that he may be subject to decertification or suspension by POST (the "July Notice"). A second notice, dated September 23, 2025, indicated that Sommers resigned, that he may be subjection to POST action, that he either received or waived a 11 *Del. C.* § 9200 hearing, and that he resigned or retired prior to entry of findings concerning a breach of internal discipline for which he could have been terminated (the "September Notice"). At the hearing, yet a third notice was provided to the Hearing Board. This notice, which was not signed by either party,[1] is dated the same day of the July Notice (July 22, 2025) and indicates that Sommers both resigned and was discharged. This matter was then scheduled for a hearing before this Hearing Board on October 8, 2025.

[1] The July Notice and the September Notice were both signed by Laura Giles, Chief of EPD. Sommers did not sign either notice. The July Notice states that Sommers refused to sign and the September Notice indicates "N/A" in the employee signature line.

SUMMARY OF EVIDENCE

EPD submitted a binder to the Board containing 17 tabbed exhibits. These exhibits were admitted mostly without objection. EPD Exs. 3-5 and 9 were admitted over objection during the course of the hearing. Sommers submitted a binder of exhibits, tabbed 1-9. These exhibits were admitted without objection. EPD presented testimony from Chief Giles, M/C Sowden and Det. Mitchell. Sommers testified on his own behalf.

FINDINGS OF FACT

Unsurprisingly, given the confusing nature of the various notices submitted to POST regarding Sommers' separation from EPD, as noted above, much of the argument and the evidence submitted to the Board focused on the nature of Sommers' separation from EPD and whether POST had jurisdiction to consider the matter. Chief Giles initially explained that, on July 21, 2025, Sommers was scheduled to be interviewed by M/C Sowden regarding an Internal Affairs ("IA") investigation that had been ongoing (IA25-06). After Sommers failed to appear for his interview, EPD sent officers to his residence to see if he was home. He was on suspension at the time, and when the officers arrived, Sommers questioned how he could be interviewed while on suspension. EPD responded that it did not matter, and Sommers appeared later that day for his interview.[2]

Following the interview, EPD issued a termination letter, dated July 22, 2025 (the "Termination Letter"). *See* EPD Ex. 3.[3] The Termination Letter noted the IA interview conducted

[2] Sommers' counsel stated that the only notice Sommers received regarding the interview was by a text message that counsel had sent to him. M/C Sowden later testified that he texted Sommers about the interview and he did not respond to it.

[3] Sommers' objection to the Termination Letter, as well as to Exs. 4-5 and 9, appeared to center on an argument that the Board could not consider these records because Sommers did not receive a Chapter 92 hearing and could not therefore test the facts and claims set forth in those internal affairs records. Sommers also appeared to argue that the Termination Letter is highly prejudicial

the previous day (and that Sommers was late for the interview), provided that, "[a]s a result of that interview," a total of nine (9) charges were substantiated (and that an additional three were not substantiated), that "multiple charges" had been previously substantiated on July 3, 2025, at a "Separate Trial Board," and that the Chief was terminating Sommers as a result.

Chief Giles explained that she issued the Termination Letter and sent the July Notice to POST following the interview and her decision to terminate Sommers. Chief Giles also testified that Sommers did not request a hearing after she issued the Termination Letter and that the substantiated charges pertained to breaches of discipline for which Sommers could be terminated.

Eventually, the hearing turned its focus to the underlying facts and what caused EPD to terminate Sommers. While the details of the underlying conduct came through the testimony of Det. Mitchel and M/C Sowden (as well as EPD's exhibits), Chief Giles first highlighted EPD's concerns. Sommers started with EPD as an officer following graduation from the Dover Police Academy in August 2024. He started his field training after graduating and that concluded in late December 2024. Almost immediately, EPD started having issues with Sommers' performance

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and should not be made public (through this proceeding) since they were not challenged or tested through a hearing. The Board overruled that objection and admitted those exhibits. The IA records and Termination Letter were clearly relevant. There was no challenge to their authenticity, and the authors of those records were present and able to testify – and did in fact do so, and were subject to cross examination. The Board does not understand the contention regarding the inability to test those claims and allegations. The hearing before this Board was that opportunity to challenge all of the claims and concerns detailed in those records. Indeed, Sommer cross-examined those witnesses to some degree during the hearing. That a former officer does not pursue a Chapter 92 hearing before their agency does not mean that POST cannot examine the underlying facts surrounding an officer's separation from an agency. Indeed, assuming proper jurisdiction under 11 *Del. C.* § 8404, it is POST's *obligation* to examine all relevant facts and circumstances surrounding an officer's separation. And officers have the full right and opportunity to test that evidence and present any evidence in mitigation or opposition. *See* 11 *Del. C.* § 8404A (setting forth rights and procedures for POST hearings) and 29 *Del. C.* Chapter 100 (Administrative Procedures Act, made applicable to POST hearings).

and having concerns regarding safety. Chief Giles testified that she had received complaints from officers that Sommers was not grasping officer safety, that Sommers did not retain information once he was off field training, that he "didn't do the basics." Her concerns over officer safety eventually resulted in Chief Giles instructing Sommers not to leave the town limits of Elsmere while on duty unless there was a 10-40 (Office in Trouble) call. When asked about safety concerns, Chief Giles testified that when Sommers gets into a stressful situation, he blacks out and gets too overwhelmed, which concerned her for Sommers, fellow officers and the public.[4]

A Criminal Justice Council ("CJC") decision, dated May 28, 2025, was admitted without objection. *See* EPD Ex. 7. This decision details an incident (IA25-3) that took place on February 8, 2025, where Sommers was dispatched to a fight in progress involving some juveniles. The CJC ultimately substantiated three of ten counts brought by EPD (pertaining to not using the radio to report a foot pursuit, failing to get the names of the detained juveniles and including them in his report, and using profanity with the juveniles during the incident). Chief Giles testified that Sommers received a 20-hour suspension as a result of the CJC substantiated charges. She testified further that, with respect to the IA25-06, Sommers could have requested a hearing before the CJC.

M/C Sowden testified that he has been working in IA since 2018 and has assisted other agencies with IA investigations. He conducted an IA investigation of Sommers. EPD Ex. 4 is

[4] On cross-examination, Chief Giles was questioned regarding the nature and chronology of allowing Sommers to resign following her initial decision to terminate Sommers and the different forms submitted to POST. The Board did not find much of this testimony helpful, especially since some of the testimony and the arguments appeared to involve counsel, potentially raising attorney-client privileged communication issues. As explained more fully below, however, POST has statutory jurisdiction under the circumstances regardless of how the parties attempted to settle the employment matter or otherwise characterize Sommers' separation. Whether EDP misled Sommers or his counsel at any point along the way is a matter between EPD and Sommers. Their interaction and potential failure to have a meeting-of-the-minds on his separation and potential certification issues has no bearing on whether POST can and *should* review this matter.

M/C Sowden's IA file for IA25-06. This was the IA investigation for which Sommers was interviewed on July 21, 2025.

M/C Sowden summarized the IA25-06 investigation as follows. *See* EPD Ex. 4 (for a complete description of the incident and the alleged misconduct). Sommers had been ordered not leave the town limits of Elsmere. He had a meeting with then M/C Mitchell (now Det. Mitchell) where he was disrespectful. Multiple charges were substantiated, including for charges relating to responding to a call to which he was not dispatched and for being disrespectful to Mitchell. M/C Sowden testified about concerns he had about watching a video. There was a "shots-fired" call, but no officer was being shot at, there was no one screaming. It was a calm call and was outside of their sector. Sommers did not comply with directive not to respond. There were firearms handling issues when Sommers arrived at the scene, placing the "red dot" on the back of an officer; M/C Sowden had other concerns regarding officer safety in how he responded to the scene.

M/C Sowden testified about another incident that formed the basis of an IA investigation. They received a complaint about an EPD officer speeding without lights and sirens activated. It was mid-day with kids out and about, and after the citizen yelled for the officer slow-down, Sommers returned to the scene and exchanged inappropriate comments with the complainant. There were concerns and violations about Sommers not activating his body-worn camera (BWC). Certain charges were unfounded because the BWC was not activated and they could not determine what was said.

M/C Sowden testified about his concern about officer safety and safety of others. He said that Sommers told him that the citizen showed him a firearm in his waistband and said "what are you going to do about it?" and Sommers simply drove away and did not alert other officers to the potential danger of someone with a firearm threatening an officer. M/C Sowden testified about

another investigation where there was a vehicle pursuit that exceeded 90MPH, where Sommers didn't call the pursuit out until after the suspect was in a collision. Several charges were substantiated, including speeding without slowing down at lights, going the wrong way on a one-way street, that he took his eyes off the road by checking his computer, that he failed to use his radio, and that he failed to notify Wilmington Police when entering their jurisdiction. M/C. Sowden testified that these actions implicated officer safety and public safety. After the crash, Sommers didn't check on the car to see if anyone was hurt; he just sat there for five minutes, not radioing anyone.

M/C Sowden testified about that the IA25-03 matter involving the fight-in-progress call and why that created concern at EPD. M/C Sowden reiterated that Sommers had threatened to tase a non-resistant juvenile and chased another with his taser employed. As noted above, the CJC substantiated several charges, including not using his radio when he was in a pursuit and that he failed to obtain the names of the juveniles involved in the incident. M/C Sowden said he was concerned for officer safety because Sommers did not use a radio and that he left two of the three suspects behind. He also mentioned that there were substantiated charges against Sommers pertaining to attendance.

On cross-examination, M/C Sowden acknowledged that the CJC decision speaks for itself and that the CJC substantiated only three of the ten charges brought against Sommers regarding IA25-03. He also acknowledged that, if concerns arose during the interview, Sommers could have received additional charges. He did not, because, as M/C Sowden put it, Sommers was "no longer part of the department the next day."

Det. Mitchell testified initially about Sommers' field training. He was Sommers' Field Training Officer from September to December 2024. Det. Mitchell testified that Sommers had

difficulty retaining information and training. Det. Mitchell issued him a checklist to assist him, and Sommers lost that as well. Det. Mitchell testified about Sommers driving at an unsafe speed in response to a domestic call, that they nearly struck three vehicles and when Mitchell told him to slow down, he told Det. Mitchell to "relax." When the suspect exited the residence, he complied with commands to get on the ground, and when Det. Mitchell got on top of the suspect to secure him, Sommers ran up and pushed Det. Mitchell off the suspect, exposing Det. Mitchell and another officer to a dangerous situation.

Det. Mitchell described another incident regarding a BOLO. Sommers did not have the right channel on his radio and Sommers gave his wrong location when he had a robbery suspect. Det. Mitchell testified that Sommers failed to advise dispatch that the stopped a robbery suspect and he did not conduct a felony stop. Det. Mitchell said that in a stressful situation where officers properly focus their adrenaline, Sommers is unable to make accurate decisions. Sommers did not address any of the substantive concerns raised by the EPD witnesses.

Det. Mitchell testified that at the conclusion of field training, a decision was made to allow Sommers to go out on his own. However, shortly thereafter, Sommers was placed on field training again. On cross examination, Det. Mitchell acknowledged that the concerns and incidents he discussed did not form the basis of an IA investigation.

Sommers testified on his own behalf. Sommers testified that he never waived a hearing on IA25-06 and IA25-05. He served punishments on all other IA investigations. He also testified that had his resignation not been accepted, he would have sought a hearing. On cross, he confirmed he did not request a hearing.

The exhibits admitted into evidence include four packets of IA investigations into Sommers' conduct and performance while briefly employed as an officer with EPD.

CONCLUSIONS OF LAW

POST's jurisdiction to consider possible suspension or revocation of police officer certification is defined by 11 *Del. C.* § 8404(a)(4). Pertinent here is subsection (e), which provides for jurisdiction where an officer has: (1) received an administrative hearing under Chapter 92 of Title 11 ("LEOBOR Hearing") 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. Since Sommers did not expressly waive his LEOBOR Hearing in connection with IA25-06, the threshold inquiry is whether he implicitly waived a hearing by resigning under the circumstances presented to this Board.

It is not disputed that EPD initially terminated Sommers following his July 21, 2025, interview. The Termination Letter does not expressly provide for a right to a hearing. However, it does note that he "may have rights and should consult with your union representation." EPD Ex. 3. It is undisputed that Sommers at no point requested a hearing and there is no evidence regarding whether he consulted with his union representation. However, as early as May 28, 2025, Sommers exercised his right to a LEOBOR Hearing regarding previous charges issued by EPD. This demonstrates that Sommers knew of an ability to request, and obtain, a LEOBOR Hearing regarding officer discipline. Moreover, the Board observes that Sommers was represented by counsel throughout his termination and subsequent resignation, in lieu of termination, and that his counsel was the same counsel who represented him before the CJC Hearing in May 2025. The Board concludes, under these circumstances, and considering all of the evidence before the Board, that, by resigning in the face of charges, and having not inquired or pursued a LEOBOR Hearing, Sommers effectively waived his right to a LEOBOR Hearing. An implied waiver, under these

circumstances, suffices to trigger POST's jurisdiction and ability to consider possible action on his certification.

POST reserves suspensions and decertifications for cases 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, there was substantial evidence presented—most of which was not challenged before this Board—implicating officer safety and safety of the public. Sommers' tenure with EPD was very brief, but yet Sommers' accumulated no less than four IA investigations into his behavior and conduct implicating officer safety. While Sommers was released form field training in December 2025, he was quickly placed back on field training. Three different witnesses detailed grave concerns that they have over Sommers' safety and his ability to grasp the importance of his training. The evidence sufficiently establishes serious concerns, including pointing a firearm at another officer (inadvertently), stopping a robbery suspect and not using the radio or getting out of the patrol vehicle, knocking an experienced officer off of a suspect he was trying to secure, driving at unsafe speeds without emergency equipment activated, aggressively and needlessly threating juveniles (who turned out not to be those engaged in a potential fight) with tasing and using profanity. Additionally concerning is Sommers' apparent reaction to critique and criticism, including telling his FTO on one occasion to "relax" when he raised legitimate concerns about the speed Sommers was driving to a scene.

At the hearing, Sommers made the point several times that the facts underlying the IA investigations that resulted in his separation were never tested. This ignores the fact that Sommers could have demanded (or at least sought) a LEOBOR Hearing before resigning. He knew of his right to seek a hearing for such discipline, having done so only months prior to his separation from EPD. Further, where an officer does not have a LEOBOR Hearing, the officer has the right and

opportunity to test all challenged conduct during the hearing before this Board. *See also supra* note 3. The argument about not being able to challenge or test the underlying facts therefore does not make sense. Indeed, largely Sommers chose not to challenge EPD's substantive evidence presented to this Board during the hearing, seemingly relying instead on his procedural argument that the Board did not have jurisdiction to move forward.

RECOMMENDATION

Considering all the evidence submitted and the circumstances surrounding both the EPD internal process, and the process offered afforded Sommers in this proceeding, the Board unanimously recommends to the full POST that Edward Sommers be decertified as a Delaware police officer.

/s/ Robert Irwin
Robert Irwin, Dir. Special Investigation,
Delaware Department of Justice,
Presiding Officer

/s/ Mark Farrall
Mark Farrall, Chief,
Newark Police Department,
Member

/s/ Nick Smith
Nick Smith, Mayor,
Clayton,
Member

Date: October 24, 2025