



OFFICE OF ADMINISTRATIVE HEARINGS

State of California

GENERAL JURISDICTION DIVISION

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Department of General Services

Governor Edmund G. Brown Jr.

June 28, 2016

RECEIVED

JUN 29 2016

CONTRA COSTA
EMERGENCY MEDICAL SERVICES

Contra Costa Health Services
Emergency Medical Services
1340 Arnold Drive, Suite 126
Martinez, CA 94553-1631

Subject: Williams, Darias Parris (Contra Costa EMS)
OAH No. 2016031192
Agency No. 16-0010

Enclosed are the following:

- The original Proposed Decision
- An agency order of adoption. If the Proposed Decision is adopted, please return a copy of the signed adoption order to the Office of Administrative Hearings.
- The original Decision
- Exhibits numbered: 1 – 14, A-G
Please make sure you have received all listed exhibits. If exhibits are missing, please contact OAH immediately.
- Email copy of the Proposed Decision to:
- The above referenced case was resolved prior to conclusion of the hearing. We are returning the enclosed original exhibits 1 – x to you.

JS/lmc

Encl.

Transmittal Form
OAH 60 (Rev. 04/09)

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BEFORE THE
CONTRA COSTA COUNTY
EMERGENCY MEDICAL SERVICES AGENCY

In the Matter of the Emergency Medical
Technician Certificate held by:

DARIAS PARRIS WILLIAMS,

EMT Certification No. E044758

Respondent.

Case No. 16-0010

OAH No. 2016031192

PROPOSED DECISION

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on June 7, 2016, in Oakland, California.

Aaron Doyle, Prehospital Care Coordinator, represented complainant Patricia Frost, R.N., M.S., P.N.P., Director of Emergency Medical Services, Contra Costa County Emergency Medical Services Agency.

Respondent Darias Parris Williams represented himself and was present throughout the administrative hearing.

The matter was submitted for decision on June 7, 2016.

PRELIMINARY MATTER

At hearing, complainant's moved to amend the accusation and petition to revoke probation. Respondent did not object to the motion and it was granted. The petition to revoke probation was amended to add the following allegation as Paragraph 29:

In or about 2015, respondent violated the terms of his probation by violating California Code of Regulations, title 22, section 10079, subdivision (f), by failing to notify the Agency of a change of address within 30 days.

FACTUAL FINDINGS

Introduction

1. On February 13, 2009, the agency issued an Emergency Medical Technician (EMT) certificate to Darias Parris Williams (respondent).

2. On July 23, 2012, respondent was convicted of driving under the influence of alcoholic beverages. As a result of the conviction, on April 16, 2013, respondent's EMT certificate was revoked; however, the revocation was stayed during a three-year probationary period with terms and conditions that required respondent to comply with the probationary conditions, appear as directed by the agency for interviews, submit quarterly reports, notify the agency of any EMS employment, notify the agency of termination of employment, obey all laws, abstain from the use of alcohol, complete his court-ordered alcohol program, and submit to routine and random biological fluid testing within 12 hours of a request.

3. On March 14, 2016, complainant Patricia Frost, R.N., M.S., P.N.P., Director of the agency, in her official capacity, filed the accusation and petition to revoke respondent's probation.

Probation Violations

LATE QUARTERLY REPORTS

4. The Quarterly Reports due on January 15, 2014, April 15, 2014, January 15, 2015, July 15, 2015, and October 15, 2015, were received one day late. The Quarterly Report due on January 15, 2016, was received on February 19, 2016. The submission of quarterly reports after the deadline constitutes a violation of Probation Condition 3. Respondent timely submitted the remainder of the Quarterly Reports.

LATE CHANGE OF ADDRESS

5. Respondent was homeless and living in his car for some months in 2015 and early 2016. He did not notify the agency that he was homeless. Respondent provided the agency with his new address on April 6, 2016. Failing to provide the agency with a current address constitutes a violation of Probation Condition 7.

MISSED BIOLOGICAL FLUID TESTING

6. Condition 12 of respondent's probation requires that he submit to routine and random biological fluid testing or drug/alcohol screening as directed by the agency. When the agency requests a random test, respondent is required to provide the sample within the time specified, or within 12 hours of the request if no time is specified. When respondent received the order to submit to a test, the order always said to appear by 5:00 p.m.

Respondent has never had a positive test result. However, on March 16, 2015, when respondent appeared for a random test at an Oakland lab shortly after 4:00 p.m., he was told that the lab had stopped testing already and he was not permitted to submit to a test. Lab records document that the lab stopped testing that day at 3:56 p.m. Respondent contacted the agency from the lab; Aaron Doyle, the Program Coordinator, requested that respondent submit to a test the next day. Respondent appeared for the test on March 17, 2015, at 9:23 a.m.; the test result was negative.

7. On April 17, 2015, respondent submitted to a random test as ordered and the test result was negative.

8. On June 18, 2015, respondent did not appear for a random test as ordered. Failing to submit to a biological fluid test constitutes a violation of Probation Condition 12.

9. On August 28, 2015, respondent appeared for a test and was charged for the test in advance; however, when respondent arrived, the lab had changed its hours without notifying respondent or the agency. Respondent called Doyle from the lab and left a voicemail about the situation. Respondent later received a call from the lab stating that Doyle asked for respondent to agree to a hair follicle test on September 12, 2015.

Respondent arrived for the test on September 12, 2015, as directed. However, when he arrived he was unable to submit to the test for two reasons: 1) his hair, which is very short, was too short for the lab to test; and, 2) the fee was \$335 instead of the regular \$80 fee and respondent had not been advised of the increased fee and was unable to pay the higher fee. The fact that respondent's hair was too short for the test and that he did not have the resources for the higher fee was recorded in a letter from the lab dated September 16, 2015.

10. On September 18, 2015, respondent submitted to a drug screen and the result was negative.

11. On November 5, 2015, respondent arrived to submit to a test shortly after 4:00 p.m. and paid the \$80 fee. Respondent was aware that the lab stopped testing at 4:30 p.m., so he arrived shortly after 4:00 p.m. However, upon his arrival, he was informed that the lab had recently changed its hours from 4:30 p.m. to 4:00 p.m., and it was too late to test. Quest Lab confirmed the change in hours to the agency and offered to reschedule the test.

12. On November 16, 2015, respondent appeared for the rescheduled test and the result was negative.

13. On January 4, 2016, respondent appeared for a random test and the result was negative.

14. On March 10, 2016, respondent did not appear for a random test as ordered. Respondent's failure to appear for the test constitutes a violation of Probation Condition 12.

Respondent's Evidence

15. Respondent has worked in security since his EMT license was placed on probation. He has worked at Silicon Valley Security Patrol and Securitas, and is currently employed full-time at HighCom Security Services. He has worked at HighCom Security Services since December 2012. Respondent also worked in a seasonal position with CalFire in 2014.

16. Respondent failed to appear for two random drug tests when ordered, the first on June 18, 2015, and the second on March 10, 2016. The reason he failed to appear for those tests is that he was at work and was not permitted to leave. On June 18, 2015, he was notified that he needed to test at 9:13 a.m., when he was already at work at Securitas and was scheduled to remain at work until 5:00 p.m. The lab was open until 4:30 p.m. Respondent had a 30-minute lunch break, which was not enough time to drive to the lab, test and return to work. Respondent asked to leave work early, but his supervisor would not allow it.

17. On March 10, 2016, respondent was told he needed to test at 8:49 a.m. On March 10, 2016, respondent worked at HighCom from 8:00 a.m. until 4:30 p.m. Respondent's supervisor, Michael Nash, is aware of respondent's responsibility to submit to random drug and alcohol screens. Respondent advised Nash that he needed to go to the lab to test before 4:00 p.m. and Nash tried to accommodate him, but was unable to locate a substitute. Nash had been successful in finding replacements on other test dates.

Nash wrote a letter confirming that he had attempted to find a substitute so that respondent could get to the lab, but was unable to find anyone. Nash also confirms that he advised respondent that if he left his post, he would be disciplined and possibly terminated. Respondent was unable to leave and therefore missed the test.

Nash reports that respondent is an exemplary security officer and an individual of high character. He considers respondent to have leadership potential in or out of the security industry. Nash understands the importance of respondent being allowed to leave for random tests and will attempt to make arrangements to accommodate his ability to do so.

18. Respondent successfully completed the court-ordered alcohol program on January 24, 2013. The program was four months in length. During the class, respondent learned of the seriousness of driving under the influence; he heard from people who had hurt others while driving under the influence, and he heard from those who had lost loved ones due to another's driving under the influence.

Respondent also successfully participated in the court-ordered interlock program from September 2012 to February 2013. Respondent paid the court-ordered fees, including the first offender program fees and interlock program fees. Respondent successfully completed his criminal probation on July 22, 2015, and his driving privileges have been fully restored.

19. Respondent testified in a manner consistent with someone who is truthful and has integrity. He deeply regrets his decision to drive after drinking and takes full responsibility for his behavior; he was 22 years old at the time and he has matured since then. Respondent demonstrated sincere remorse during his testimony. Respondent has abstained from alcohol since his arrest for driving under the influence on May 12, 2012. He has made a sincere commitment to lead a law-abiding life.

20. Respondent has sent his Quarterly Reports to the agency by facsimile transmission, which was permissible when his license was placed on probation three years ago. He was recently advised that the reports must be sent in by certified mail. Respondent did not realize that if he sent the reports in by facsimile transmission in the evening after work, they were considered late.

21. Respondent was ashamed that he was homeless for a period of time, and did not advise the agency. He provided the agency with his new address as soon as he had one.

22. Respondent has learned a great deal from being on probation. Respondent is very willing to submit to biological fluid testing but cannot afford to be terminated from his job. Respondent has had another discussion with Nash regarding the testing; Nash understands how important it is for respondent to be permitted to leave to test during the workday and has pledged to make arrangements for respondent.

23. Respondent has a passion for EMT work and is eager to return to it. Respondent was raised by his grandparents, and his grandfather was very ill with congestive heart failure and other ailments during his childhood. When respondent was 12 years old, he observed his grandfather gasping for breath and 911 was called. The fire department and an ambulance responded and respondent watched as emergency personnel cared for his grandfather, who survived. This occurred several times while respondent was growing up and he developed a deep appreciation for EMT's and paramedics. Respondent's grandfather passed away, but respondent feels a connection to his grandfather when he is working as an EMT.

Ultimate Conclusions

24. Respondent's testimony was very credible and was supported by the documentation from the labs, the letter from his supervisor and other documentation he provided at hearing. Respondent's driving under the influence arrest occurred over four years ago. He has abstained from alcohol since that time. Although respondent has not complied with each and every condition of probation, he has complied with the most important conditions: he abstained from alcohol, he took his probation seriously and he obeyed the law. Respondent demonstrated by his demeanor and his testimony that he is safe to work as an EMT without further restriction.

LEGAL CONCLUSIONS

1. Complainant bears the burden of proof to establish by a preponderance of the evidence that respondent has violated the terms of his probation. (*Sandarg v. Dental Bd. of California* (2010) 184 Cal.App.4th 1434, 1441.)

Cause for Discipline

2. Pursuant to Health and Safety Code section 1798.200, subdivision (c), the Medical Director of a local emergency medical services agency may impose discipline on a license if the licensee has used alcoholic beverages to excess. Complainant seeks to impose discipline on respondent's EMT certificate due to the driving under the influence conviction that occurred in July 2012. However, complainant has already imposed discipline for this conviction by revoking his certificate, staying the revocation and placing the certificate on probation. (Factual Finding 2.) Cause for discipline pursuant to Health and Safety Code section 1798.200, subdivision (c), does not exist at this time.

3. Complainant seeks to revoke respondent's probation due to his violation of various conditions. As set forth in Factual Findings 4, 8 and 14, respondent submitted several quarterly reports after the deadline in violation of Condition 3, he failed to immediately notify the agency of his change of address in violation of Condition 7, and he failed to appear for biological fluid testing on June 18, 2015, and on March 10, 2016, in violation of Condition 12. Therefore, cause to revoke respondent's probation exists.

Disciplinary Considerations

4. When complainant filed the petition to revoke probation, respondent was one month short of completing his three-year probation. Although respondent failed to follow some of the probation conditions as ordered, he followed the most important condition, that he abstain from alcohol. Respondent demonstrated by his demeanor while testifying that he has taken his probationary grant very seriously. Respondent provided a credible explanation and/or supporting documentation for the reasons he was unable to appear for testing on June 18, 2015 and March 10, 2016.

Respondent has matured since his arrest, which occurred four years ago and when he was 22 years old. Respondent has learned a great deal from the conviction and from being on probation to the agency. Respondent has made a commitment to lead a law abiding life, and is well-regarded by his supervisor at HighCom where he has worked for over three years.

By his attitude while testifying, his acceptance of responsibility for his shortcomings, and his pledge to make every effort to succeed as an EMT, respondent has demonstrated that he has been rehabilitated. Public protection no longer requires that respondent be monitored through probation. Respondent has established that he is safe to work as an EMT without restriction.

ORDER

The accusation and petition to revoke respondent Darias Parris Williams's probation is dismissed. EMT Certificate No. E044758 is fully restored.

DATED: June 24, 2016

DocuSigned by:

Jill Schlichtmann

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JILL SCHLICHTMANN
Administrative Law Judge
Office of Administrative Hearings

