

BEFORE THE MINNESOTA

BOARD OF PEACE OFFICER STANDARDS AND TRAINING

In the Matter of the Peace Officer License of
Herbert Kotek
License No. 6212

**FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER**

The above-entitled matter came on for a prehearing conference on November 6, 2017, before Administrative Law Judge ("ALJ") Jim Mortenson at the request of a Complaint Investigation Committee ("Committee") of the Minnesota Board of Peace Officer Standards and Training ("Board"). The matter was initiated pursuant to the Notice and Order for Hearing and Prehearing Conference ("Notice of Hearing") issued by the Committee on October 5, 2017. Anthony de Sam Lazaro, Assistant Attorney General, represented the Committee. Herbert Kotek ("Respondent"), made no appearance.

On November 20, 2017, the ALJ issued Findings of Fact, Conclusions of Law, and Recommendation Upon Default ("ALJ's report"), recommending the Board take disciplinary action against Respondent's peace officer license. (A true and accurate copy of the ALJ's report is attached hereto and incorporated herein as Exhibit A.)

The Board convened to consider the matter on January 25, 2018, at 1600 University Avenue West, Suite 200, St. Paul, MN 55104-3825. Anthony de Sam Lazaro, Assistant Attorney General, appeared and presented oral argument on behalf of the Committee. Respondent did not appear. Board members Kent Wilkening, Mark Fahning, and Rebecca Swanson did not participate in deliberations and did not vote in the matter. Nathan R. Gove, Executive Director of the Board, and Mark Raquet, Standards Coordinator for the Board, did not participate in the deliberations. Karen B. McGillic, Assistant Attorney General, was present as legal advisor to the Board.

FINDINGS OF FACT

The Board has reviewed the record of this proceeding and hereby accepts the November 20, 2017, ALJ's report and accordingly adopts and incorporates by reference the Findings of Fact therein. Paragraph 5 of the ALJ's Conclusions of Law states,

When a party defaults by failing to appear at a prehearing conference without the prior consent of the Administrative Law Judge, the allegations and the issues set out in the relevant pleading may be taken as true and deemed proved.¹ The Administrative Law Judge, therefore, deems the allegations set forth in the Notice [of Hearing] to be true and proved.

The allegations contained in the Notice of Hearing are as follows:

1. Respondent is a peace officer licensed by the Board.
2. Respondent's application for renewal of his peace officer license was dated June 27, 2014, and received by the Board on June 30, 2014. Respondent signed the application and by his signature verified that he: **“. . . completed the required number of continuing education credits and may be subject to a further review of my CE documentation.”**
3. On September 18, 2014, the Board sent a letter to Respondent informing him that Board rules require licensees to provide documentation of continuing education credits when requested by the Board, and specifically requesting that by October 18, 2014, he complete and return an enclosed form on which he was supposed to list his continuing education and attach documentation or written verification of completion of those courses. The letter and enclosed form were mailed to Respondent at his last known address on file with the Board by certified and regular U.S. mail.
4. Both mailings were returned to the Board by the U.S. Postal Services marked "RETURN TO SENDER." The U.S. Postal Service labels indicated a possible P.O. Box address for Respondent, but the forwarding time had expired.
5. On or about September 25, 2014, the Board again sent the same letter and form to Respondent by certified mail at the P.O. Box marked on the returned envelope. Respondent signed for the certified mailing on October 20, 2014. The return receipt arrived at the Board office on October 21, 2014.
6. Sometime after October 21, 2014, the Board received voice mail messages from Respondent indicating that he would call back the next day. Even though Respondent stated the time he intended to call back, Respondent did not call back at the time he indicated he would do so.

¹ Minn. R. 1400.6000.

7. To date, Respondent has not submitted any documentation to the Board to verify the continuing education credits he reported on his license renewal application in June 2014.

8. The Board's rules require forty-eight hours of continuing education to be completed by each peace officer who has been licensed for at least thirty months, during each three year license cycle. Minn. R. 6700.1000, subp. 3 C.

9. The Board's rules authorize it to conduct audits of randomly selected licensees for a continuing education review and require peace officers to verify successful completion of the required hours of board-approved continuing education for license renewal. Minn. R. 6700.0900, subp. 2.

CONCLUSIONS

The Board accepts the November 20, 2017, ALJ's report and accordingly adopts and incorporates the Conclusions therein.

ORDER

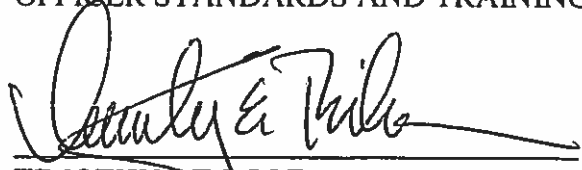
Based on the foregoing Findings of Fact and Conclusions and upon the recommendation of the ALJ, the Board issues the following Order:

1. NOW, THEREFORE, IT IS HEREBY ORDERED that Respondent's peace officer license in the State of Minnesota is **REVOKED** immediately pursuant to Minnesota Statutes section 626.8432. Respondent shall not in any manner practice or hold himself out as a peace officer in this State.

2. IT IS FURTHER ORDERED that Respondent shall surrender his peace officer license to the Board immediately. The license shall be forwarded to the Minnesota Board of Peace Officer Standards and Training, 1600 University Avenue West, Suite 200, Saint Paul, Minnesota 55104-3825.

Dated: 1-29-2018

MINNESOTA BOARD OF PEACE
OFFICER STANDARDS AND TRAINING

A handwritten signature in black ink, appearing to read "Timothy B. Bils", written over a horizontal line.

TIMOTHY BILDSOE
Board Chair