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**Before The
State of Wisconsin
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES**

In the Matter of the Application for A Private
Security Person Permit of Michelle Lewis,
Applicant

FINAL DECISION AND ORDER
0005832
Order No. _____

Division of Legal Services and Compliance Case No. 18 RSG 006

The State of Wisconsin, Department of Safety and Professional Services, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Department of Safety and Professional Services.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated at Madison, Wisconsin on the 30th day of July, 2018.

A handwritten signature in cursive script, reading "Aloysius Rohmeyer".

Aloysius Rohmeyer
Chief Legal Counsel
Department of Safety and Professional Services



**Before The
State of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of the Application for A Private
Security Person Permit of Michelle Lewis, Applicant

DHA Case No. SPS-18-0022
DLSC Case No. 18 RSG 006

PROPOSED DECISION AND ORDER

The parties to this proceeding for purposes of Wis. Stat. §§ 227.47(1) and 227.53 are:

Michelle Lewis
924 W. Lapham Blvd
Milwaukee, WI 53204

Wisconsin Department of Safety and Professional Services
P.O. Box 8366
Madison, WI 53708-8366

Department of Safety and Professional Services, Division of Legal Services and
Compliance, by

Attorney Gretchen Mrozinski
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

PROCEDURAL HISTORY

On February 28, 2018, the Department of Safety and Professional Services (Department) denied Applicant Michelle Lewis's (Applicant) application for a Private Security Person Permit, application no. 622767, in the State of Wisconsin. The Department's denial was based on Applicant's conviction history which included convictions that occurred on or about September 16, 2016, for Intimidate Victim/Dissuade Complaints, a class A misdemeanor, and Obstructing an Officer, a class A misdemeanor. The Department determined that the convictions substantially related to the practice of a private security person. Therefore, the Department denied the application pursuant to Wis. Stat. §§ 111.335(1)(c)1., 440.26(2)(c)5., 440.26(5m)(am), and 440.26(6)(a)1. Applicant sent a letter requesting a hearing on the Notice of Denial, pursuant to Wis. Admin. Code § SPS 1.07.

On April 6, 2018, the Department's Division of Legal Services and Compliance (Division) sent Applicant a letter informing her that her request for a hearing was granted. On April 16, 2018, the Division served Applicant by sending a copy of the Notice of Hearing to her last known address on file with the Department. On April 16, 2018, the undersigned Administrative Law Judge (ALJ) for the Division of Hearings and Appeals sent a Notice of Telephone Prehearing Conference to the parties scheduling a prehearing conference for April 27, 2018.

Both parties appeared at the April 27, 2018 prehearing conference, at which a hearing date was set for June 6, 2018, at 10:00 a.m. Applicant failed to appear, in person or by phone, for the June 6, 2018 hearing. As a result, the Division moved for default and dismissal due to Applicant's failure to appear. The ALJ granted the Division's request and the Division indicated it would file a recommended proposed decision and order. The ALJ issued a notice and order on June 7, 2018, informing Applicant that she was in default, and ordering the Division to file its recommended proposed decision and order by June 20, 2018. On June 15, 2018, the Division timely filed its recommended proposed decision and order in this matter.

FINDINGS OF FACT

Facts Related to the Denial of Private Security Person Permit

Paragraphs 1 through 10 are taken from Applicant's credentialing file, application no. 622767, the entirety of which was submitted to the ALJ and Applicant on May 22, 2018, per the Prehearing Conference Report and Scheduling Order in this matter.

1. On or about September 16, 2016, Applicant was convicted of the following class A misdemeanor—Intimidate Victim/Dissuade Complaints (Wis. Stat. § 940.44(2)).

2. On or about September 16, 2016, Applicant was convicted of the following class A misdemeanor—Obstructing an Officer (Wis. Stat. § 946.41(1)).

3. On or about September 28, 2017, Applicant applied for a Private Security Person Permit.

4. On February 28, 2018, via letter, the Department denied Applicant's application for a Private Security Person Permit, application no. 622767. The denial letter included the following reasons for denial:

- a. Your history of convictions substantially relates to the practice of a private security person;
- b. Granting you a Private Security Person Permit is not appropriate due to your convictions, pursuant to Wis. Stat. §§ 111.335(1)(c)1., 440.26(2)(c)5., 440.26(5m)(am), and 440.26(6)(a)1.;
- c. Granting you a license at this time creates an unreasonable risk of harm to the public as you have not demonstrated that you can work as a private security person in a manner that safeguards the interests of the public; and

- d. The legal basis for this decision may be found in Wis. Stat. §§ 111.335(1)(c)1., and 440.26 and Wis. Admin. Code chs. SPS 31 and 35.

Facts Related to Default

5. On April 6, 2018, the Division mailed Applicant a letter advising that Applicant's request for hearing was granted.

6. On April 16, 2018, the Division filed with the Division of Hearing and Appeals a Notice of Hearing in this matter.

7. On April 16, 2018, the Division served Applicant by sending a copy of the Notice of Hearing to her last known address on file with the Department (924 West Lapham Boulevard, Milwaukee, Wisconsin 53204), via regular mail. The regular mail copy of the Notice of Hearing was never returned to the Department.

8. The ALJ sent a Notice of Telephone Prehearing Conference on April 16, 2018 to Applicant at 924 West Lapham Boulevard, Milwaukee, Wisconsin 53204, scheduling a prehearing conference for April 27, 2018, at 10:30 a.m.

9. On April 27, 2018, both parties appeared for the prehearing conference; the ALJ, along with both parties, agreed to a hearing date of June 6, 2018.

10. A Prehearing Conference Report and Scheduling Order, dated April 27, 2018, and mailed to both parties, stated that the contested case hearing would be held on June 6, 2018, at 10:00 a.m., at the Department's offices in Madison, Wisconsin. The Order further provided that the Applicant may testify by telephone.

11. On June 6, 2018, at 10:00 a.m., at the Department's Madison, Wisconsin offices, the Division appeared before the ALJ by Attorney Gretchen Mrozinski. Applicant did not appear in person. Beginning at approximately 10:00 a.m., and continuing through 10:21 a.m., four telephone calls were placed to Applicant's phone number at 414-759-0176.

12. Applicant answered the first telephone call, confirmed that she was Michelle Lewis, and then the call was disconnected. A second and third call were placed thereafter and went unanswered and/or to voicemail. The ALJ left messages advising of the purpose of her call, the date and time of the hearing, and that she would call back at approximately 10:15 a.m.

13. At 10:21 a.m., the ALJ called Applicant and left a message stating that the hearing was scheduled for 10:00 a.m.; that notice of the hearing was sent to Applicant on April 27, 2018; that the ALJ made previous attempts to contact Applicant; that this was another attempt to contact Applicant and that Applicant has not picked up her phone; and, that the ALJ would entertain any motion from the Division at that time.

14. The Division moved for default and dismissal, and the ALJ granted the Division's request. A notice and order was issued on June 7, 2018, informing Applicant that she was in default, and ordering the Division to file a recommended proposed decision and order by June 20, 2018. On June 15, 2018, the Division timely filed its submission.

15. As of the date of the Division's submission, neither the Department nor the ALJ had received further communication from Applicant.

DISCUSSION AND CONCLUSIONS OF LAW

The Department has jurisdiction over this matter, pursuant to Wis. Stat. §§ 440.26(2)(c)5., 440.26(5m)(am), and 440.26(6)(a)1. In the instant case, Applicant failed to appear at the contested case hearing scheduled for June 6, 2018, following due notice. She failed to contact the Department or ALJ following the June 6, 2018 hearing. Her actions demonstrate an abandonment of her appeal.

When neither the applicant nor his or her representative appears at the time and place designated for the hearing, "...the credentialing authority may take action based upon the record as submitted. By failing to appear, an applicant waives any right to appeal the action taken by the credentialing authority." Wis. Admin. Code. § SPS 1.11. Further, pursuant to Wis. Admin. Code § HA 1.07(3)(a), "[i]f an appellant fails to appear at a hearing following due notice, the administrative law judge may dismiss the appeal unless the appellant shows good cause for the failure to appear." Failure to appear is defined by Wis. Admin. Code § HA 1.07(3)(c):

(c) For a telephone or video hearing or prehearing, the administrative law judge may find a failure to appear grounds for default if any of the following conditions exist for more than ten minutes after the scheduled time for hearing or prehearing conference: (1) The failure to provide a telephone number to the division after it had been requested; (2) the failure to answer the telephone or videoconference line; (3) the failure to free the line for the proceeding; (4) the failure to be ready to proceed with the hearing or prehearing conference as scheduled.

Accordingly, if an appellant fails to appear at a hearing following due notice, the appeal may be dismissed, unless good cause is shown for the failure to appear. Wis. Admin. Code § HA 1.07(3)(a); *see also* Wis. Admin. Code § 1.11 (by failing to appear, "...an applicant waives any right to appeal the action taken by the credentialing authority."). Thus, this matter may be dismissed without addressing the merits. Nevertheless, although unnecessary, because Wis. Admin. Code § SPS 1.11 also provides that a failure to appear may result in action being taken "based on the record as submitted," I also address the merits based on the facts as alleged in Applicant's credentialing file, application no. 622767, the entirety of which was submitted to the ALJ and Applicant on May 22, 2018, per the Prehearing Conference Report and Scheduling Order in this matter.¹

¹ Using facts contained in Applicant's credentialing file as the basis of the findings and order is consistent with the provisions governing disciplinary proceedings under Wis. Admin. Code. SPS ch. 2. Pursuant to Wis. Admin. Code § SPS 2.14, when a respondent in a disciplinary proceeding fails to appear, the disciplinary authority "[m]ay make findings and enter an order on the basis of the complaint and other evidence."

Wisconsin Stat. § 440.26(2)(c)5. provides that “[t]he department may, based on rules adopted by the department, refuse to issue a license under this section to an individual who has committed any of the acts described in sub. (6)(a)1. to 5.”

Wisconsin Stat. § 440.26(5m)(am) provides that “[t]he department may refuse to issue a private security permit to a person who has been convicted of a misdemeanor or found to have violated any state or local law that is punishable by a forfeiture, subject to ss. 111.321, 111.322, and 111.335.”

Wisconsin Stat. § 440.26(6)(a)1. provides for the revocation, suspension and limitation of a credential if the person has “[b]een convicted of a misdemeanor or found to have violated any state or local law that is punishable by a forfeiture, subject to ss. 111.321, 111.322 and 111.335.”

Wisconsin Admin. Code § SPS 31.05 provides that the Department may deny the application for a Private Security Person Permit if “[t]he applicant’s conduct is a ground for discipline of a credential holder under s. SPS 35.01.”

Wisconsin Admin. Code § SPS 35.01(2) provides that a private security person may be disciplined if that person violated any law, the circumstances of which substantially relate to the practice of a private security person.

Applicant was convicted of crimes involving the intimidation of a victim and/or dissuading a complaint, as well as obstructing an officer—both class A misdemeanors. Wisconsin Stat. § 940.44(2) defines intimidation of victims, in relevant part, as “knowingly and maliciously prevent[ing] or dissuad[ing], or . . . attempt[ing] to so prevent or dissuade, another person who has been the victim of any crime . . . from . . . [c]ausing a complaint, indictment, or information to be sought or prosecuted.”

Wisconsin Stat. § 946.41(1) defines resisting or obstructing an officer as “knowingly resist[ing] or obstruct[ing] an officer while such officer is doing any act in an official capacity and with lawful authority.”

Determining whether the circumstances of a criminal conviction are substantially related to the credential applied for requires assessing whether the tendencies and inclinations to behave in a certain way in a particular context are likely to reappear later in a related context, based on the traits revealed. It is the circumstances which foster criminal activity that are important, *e.g.*, the opportunity for criminal behavior, the reaction to responsibility, or the character traits of the person. *County of Milwaukee v. LIRC*, 139 Wis. 2d 805, 824, 407 N.W.2d 908 (1987). The circumstances of the offense are found in the elements of the crime. *Id.* at 823-24.

A private security person is responsible for providing security to his or her client, which includes securing the client from unlawful acts. Applicant’s convictions are indicative of someone who disregards an individual’s security and instead actively perpetrates an unlawful act on a victim of a crime. Applicant’s convictions demonstrate tendencies to impede a lawful investigation and instead promote the purposeful obstruction of that investigation. Applicant’s convictions are substantially related to the Private Security Permit application.

The facts in this case are undisputed. The applicable law is clear. Pursuant to Wis. Stat. §§ 111.335(1)(c)1., and 440.26, and Wis. Admin. Code chs. SPS 31 and 35, the Department denied Applicant's application for a Private Security Person Permit because Applicant's crimes were substantially related to the practice of a private security person. In addition, the Department denied Applicant's application because granting her a credential created an unreasonable risk of harm to the public as Applicant had not demonstrated that she could work as a private security person in a manner that safeguards the interests of the public. The Department's denial was not based on a mistake of fact or law, and was not arbitrary or capricious. As such, the Department's denial of Applicant's application for a Private Security Person Permit is affirmed.

ORDER

Accordingly, IT IS ORDERED that the Department's February 28, 2018 Notice of Denial is affirmed, and Applicant's request for hearing is dismissed.

IT IS FURTHER ORDERED that the terms of this Order are effective on the date the Final Decision and Order in this matter is signed by the Department.

Dated at Madison, Wisconsin on June 18, 2018.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, 5th Floor
Madison, Wisconsin 53705
Telephone: (608) 266-7709
FAX: (608) 264-9885

By: _____

Jennifer E. Nashold

Administrative Law Judge