

**COMMONWEALTH OF PENNSYLVANIA
PROFESSIONAL STANDARDS AND PRACTICES COMMISSION**

**DEPARTMENT OF EDUCATION,
Petitioner,**

v.

**ANTHONY J. BUCKWASH,
Respondent.**

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DOCKET NO. DI-21-053

ORDER GRANTING JUDGMENT ON DEFAULT

This matter is before the Professional Standards and Practices Commission (“Commission”) upon the Department of Education’s (“Department”) Motion for Judgment on Default. For the reasons set forth below, the Motion is granted.

BACKGROUND AND PROCEDURAL HISTORY

The Department initiated disciplinary proceedings against Anthony J. Buckwash (“Respondent”) with the filing of a Notice of Charges on June 3, 2021. The Notice of Charges alleges that Respondent was involved in a hit and run accident in 2012 and that he was convicted of DUI-1st Offense in 2013 and DUI-2nd Offense in 2014. The Notice of Charges also alleges that Respondent’s conduct constitutes immorality, intemperance, and negligence under the Educator Discipline Act (“Act”) and the Commission’s regulations and requests the imposition of a public reprimand.

Respondent’s response to the Notice of Charges was due on or before July 6, 2021. When no response was filed, on July 22, 2021, the Department filed a Motion for Judgment on Default, requesting that the Commission find Respondent in default and issue an order directing the Department to issue a public reprimand to Respondent. The Commission considered the Motion at its September 13, 2021, meeting.

Respondent, though properly notified in advance of the date and time of the meeting, did not appear.

FINDINGS OF FACT

1. Respondent holds an Instructional II certificate in the area of Physics 7-12 and an Administrative I certificate in the area of Principal PK-12.
2. Respondent was most recently employed by the Coatesville Area School District as a physics teacher until his dismissal.
3. On July 5, 2012, Respondent struck two vehicles from behind with such force that the airbags deployed and the vehicles suffered damage. Following the crash, the drivers of the impacted vehicles agreed to move their vehicles off the roadway. Thereafter, Respondent fled the scene. Police later interviewed Respondent and he admitted to driving away without providing any information to the other two drivers.
4. On June 25, 2013, Respondent operated his vehicle under the influence of alcohol. Respondent was observed by law enforcement operating his vehicle at a high rate of speed and failing to stay within his lane of traffic. Police initiated a traffic stop and detected the odor of alcohol emanating from Respondent's person and observed he had glassy bloodshot eyes.
5. Respondent admitted to consuming one beer. Additionally, he informed police the smell of alcohol was from an open container of beer inside his vehicle and that he was texting on his cell phone while driving. Respondent performed field sobriety testing as instructed and demonstrated signs indicative of intoxication. He agreed

to submit to chemical testing. His BAC result was 0.130% within two hours of operating his vehicle.

6. As a result of Respondent's conduct on June 25, 2013, he was criminally convicted of DUI: High Rate of Alcohol (BAC .10 - .16) – 1st Offense (75 Pa.C.S. § 3802(b)), in Chester County, Pennsylvania on July 21, 2014.
7. On January 25, 2014, Respondent again operated his vehicle under the influence of alcohol. Respondent was observed by law enforcement operating his vehicle while failing to stay within his lane of traffic. Police initiated a traffic stop and detected the odor of alcohol emanating from Respondent's vehicle and person and observed he had glassy bloodshot eyes. Respondent performed field sobriety testing as instructed and demonstrated signs indicative of intoxication.
8. As a result of Respondent's conduct on January 25, 2014, he was criminally convicted of DUI: Highest Rate of Alcohol (BAC .16+) – 2nd Offense (75 Pa.C.S. § 3802(c)), graded as a Misdemeanor of the First Degree, in Chester County, Pennsylvania on July 21, 2014.
9. Respondent received the Notice of Charges and all other notices in this matter.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction in this matter.
2. Respondent is in default under 1 Pa. Code § 35.37. 22 Pa. Code § 233.115(c)(1).
3. The Commission may deem admitted the relevant facts stated in the Notice of Charges and proceed to consideration of discipline based upon the admitted facts and exhibits to the Notice of Charges. 22 Pa. Code § 233.115(c)(1); Kinniry

v. Professional Stds. & Practices Comm'n, 678 A.2d 1230 (Pa. Cmwlth. 1995).

4. Immorality is conduct which offends the morals of the Commonwealth and is a bad example to the youth whose ideals a professional educator or charter school staff member has a duty to foster and elevate. 22 Pa. Code § 237.3.
5. Respondent is guilty of Immorality.
6. Intemperance is a loss of self-control or self-restraint, which may result from excessive conduct. 22 Pa. Code § 237.5.
7. Respondent is guilty of Intemperance.
8. Negligence is a continuing or persistent action or omission in violation of a duty. 22 Pa. Code § 237.8(a).
9. A duty may be established by law, by promulgated school rules, policies or procedures, by express direction from superiors or by duties of professional responsibility, including duties prescribed by Chapter 235 (relating to Code of Professional Practice and Conduct for Educators). 22 Pa. Code § 237.8(b).
10. Respondent is guilty of Negligence.
11. Respondent is subject to discipline under the Act. 24 P.S. § 2070.9c(a)(1), (3), and (5).

DISCUSSION

Under 22 Pa. Code § 233.115(a), a Notice of Charges is to be treated as an order to show cause under 1 Pa. Code § 35.14. If the educator timely responds in writing to the Notice of Charges, setting forth the facts upon which he or she is relying and stating concisely the matters of law relied upon, in compliance with 1 Pa. Code 35.37, the Commission will appoint a hearing officer to conduct an evidentiary hearing

on the matter. 22 Pa. Code § 233.115(d). If, however, the educator fails to timely respond to the Notice of Charges, the educator is deemed to have defaulted under 1 Pa. Code § 35.37, and the Commission may deem admitted the relevant facts stated in the Notice of Charges and proceed to consideration of discipline based upon the admitted facts and exhibits to the Notice of Charges. 22 Pa. Code § 233.115(c)(1); Kinniry v. Professional Stds. & Practices Comm'n, 678 A.2d 1230 (Pa. Cmwlth. 1995).

Here, the Department mailed a copy of the Notice of Charges to Respondent by first class mail on June 3, 2021. The first-class mail was not returned. Depositing in the post office of a properly addressed letter with prepaid postage raises a natural presumption that the letter reached its destination by due course of mail. In re Rural Route Neighbors, 960 A.2d 856, 861 (Pa. Cmwlth. 2008). After laying out the charges against Respondent and calling for the imposition of a public reprimand, the Notice of Charges stated:

If you contest any factual assertion made in this Notice, you have a right to request, in writing, a hearing. The proceedings shall be in the nature of a formal hearing conducted in accordance with the procedures described in 24 P.S. § 2070.13. Your response and request for a hearing must include specific admissions and denials of the factual assertions, as well as a concise reference to the facts and matters of law relied upon.

YOUR RESPONSE MUST BE RECEIVED BY THE COMMISSION WITHIN THIRTY (30) DAYS AFTER THE DATE OF SERVICE. IF YOU FAIL TO FILE A RESPONSE TO THIS NOTICE OR TO REQUEST A HEARING WITHIN THIRTY (30) DAYS AFTER SERVICE, ALL OF THE FACTUAL ASSERTIONS STATED IN THE ABOVE NOTICE MAY BE CONSIDERED ADMITTED AND DISCIPLINE MAY BE IMPOSED WITHOUT A HEARING. ADDITIONALLY, IF YOU FAIL TO RESPOND AND/OR MAINTAIN A CURRENT ADDRESS WITH THE DEPARTMENT AND COMMISSION, DISCIPLINE MAY BE IMPOSED BY THE PROFESSIONAL STANDARDS AND PRACTICES COMMISSION WITHOUT FURTHER NOTICE TO YOU AND WITHOUT THE NEED FOR YOUR PRESENCE.

Notice of Charges, page 4.

Respondent's response to the Notice of Charges was due on or before July 6, 2021. Despite the clear directive in the Notice of Charges, Respondent did not file a response. Therefore, Respondent is in default under 1 Pa. Code § 35.37 and the Commission may deem admitted the relevant facts stated in the Notice of Charges and proceed to consideration of discipline without scheduling an evidentiary hearing.

The Act empowers the Commission to "direct the Department to discipline any educator in accordance with section 9b, 9c, 9d or 9e." 24 P.S. § 2070.5(a)(11.1). Section 9c provides, in pertinent part, that the Commission shall direct the Department to impose discipline against any educator for conduct found by the Commission to constitute immorality, intemperance, or negligence. 24 P.S. § 2070.9c(a)(1), (3), and (5). The Act does not define these terms, but rather directs the Commission to establish definitions. 24 P.S. § 2070.9c(b).

The Commission has defined immorality as "conduct which offends the morals of the Commonwealth and is a bad example to the youth whose ideals a professional educator has a duty to foster and elevate." 22 Pa. Code § 237.3. Respondent's conduct clearly offends the Commonwealth's morals and sets a bad example for the students whose ideals he as a teacher is supposed to foster and elevate. Respondent's conduct is inconsistent with attempts to discourage students from drinking and driving and impacts Respondent's ability to serve as an effective role model. Respondent's conduct also put members of the public in danger. Therefore, the Commission has no difficulty concluding that Respondent is guilty of immorality. The Commonwealth Court has also found that convictions for driving under the influence of alcohol may constitute

immorality and cause for termination under the Public School Code of 1949. See Zelno v. Lincoln Intermediate Unit No. 12 Bd. of Dirs., 786 A.2d 1022 (Pa. Cmwlth. 2001)(three drunken driving convictions and two more for driving without a license amounted to a *per se* justification for dismissal); See also Moffitt v. Tunkhannock Area Sch. Dist., 192 A.3d 1214 (Pa. Cmwlth. 2018)(teacher's two DUI convictions offended the morals of the community and served as a bad example to youth justifying his dismissal).¹

Intemperance is a loss of self-control or self-restraint, which may result from excessive conduct. 22 Pa. Code § 237.5. "Conduct that extended over a period of time, whether it is hour upon hour or day after day, may be considered excessive." Gow v. Department of Education, 763 A.2d 528, 534 (Pa. Cmwlth. 2000). "Excessive is defined as 'exceeding the usual, proper, or normal.'" Id. Respondent's behavior was excessive and unquestionably evidences a loss of self-control or self-restraint. Therefore, Respondent is guilty of intemperance.

Negligence is a continuing or persistent action or omission in violation of a duty. 22 Pa. Code § 237.8(a). A duty may be established by law, by promulgated school rules, policies or procedures, by express direction from superiors or by duties of professional responsibility, including duties prescribed by Chapter 235 (relating to Code of Professional Practice and Conduct for Educators). 22 Pa. Code § 237.8(b). By engaging in illegal conduct, Respondent violated duties established by the General

1. Conduct constituting "immorality" is cause for termination of a tenured professional employee under the Public School Code of 1949. Immorality has been defined by courts as a course of conduct that offends the morals of the community and is a bad example to the youth whose ideals a teacher is supposed to foster and elevate. Zelno at 1024. While not binding on the Commission, the court's decisions in Zelno and Moffitt may be regarded as persuasive authority. See 22 Pa. Code § 237.1.

Assembly's enactment of the criminal laws. Additionally, among the duties prescribed for educators by the Code of Professional Practice and Conduct for Educators ("Code") is the requirement that educators impart to students principles of good citizenship and societal responsibility.² 22 Pa. Code § 235.4(b)(6). Respondent's actions are inconsistent with these principles. Therefore, Respondent is guilty of negligence.

The Department requests that the Commission enter an order directing it to issue Respondent a public reprimand. We agree with the Department that a public reprimand is the appropriate sanction and accordingly enter the following:

ORDER

AND NOW, this 8th day of October 2021, it is hereby Ordered:

1. The Motion for Judgment on Default is granted.
2. The Department is directed to issue Respondent a public reprimand.
3. This order shall be effective upon the conclusion of any appeal from this order or, if no appeal is timely taken, the expiration of the time prescribed for appeal.

PROFESSIONAL STANDARDS AND
PRACTICES COMMISSION

By: 

Myron Yoder
Chairperson Pro Tempore

2. The Code was amended effective August 21, 2021. For purposes of this Order, the Commission will apply only those provisions of the Code that were in existence at the time Respondent's misconduct occurred.



Attest: _____

Shane F. Crosby
Executive Director

Date Mailed: October 8, 2021