

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE BOARD OF PEACE OFFICER STANDARDS AND TRAINING

In the Matter of the Peace Officer License
of Tim Clayton Weierke, License No.
12721.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
RECOMMENDATION**

The above-entitled matter came on for a Prehearing Conference before Administrative Law Judge Kathleen D. Sheehy commencing at 9:30 a.m. on July 14, 2005, at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, 100 Washington Square, Minneapolis, Minnesota.

Bernard E. Johnson, Assistant Attorney General, 445 Minnesota Street, Suite 1800, St. Paul, Minnesota 55101-2134, appeared on behalf of the Board of Peace Officer Standards and Training (POST) Complaint Investigation Committee.

Tim Clayton Weierke (Respondent) did not appear at the Prehearing Conference. The OAH record closed July 14, 2005, upon the Respondent's failure to appear.

NOTICE

This report is a recommendation, not a final decision. The POST Board will make the final decision after a review of the record. The Board may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Board. Parties should contact Neil W. Melton, Executive Director, Minnesota Board of Peace Officer Standards and Training, Complaint Investigation Committee, 200 Spruce Tree Center, 1600 University Avenue, St. Paul, MN 55104-3825 to learn the procedure for filing exceptions or presenting argument.

If the Board fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Board, or upon the expiration of the deadline for doing so. The Board must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

STATEMENT OF ISSUE

The issue in this case is whether or not disciplinary action should be taken against the Respondent for a violation of Minn. R. 6700.1600 L.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On June 9, 2005, a Notice and Order for Hearing and Prehearing Conference in this matter was mailed to the Respondent at 6033 West 214th Street, Jordan, Minnesota 55352, and to the Respondent's attorney Richard S. Virnig, Virnig Law Office, P.A., 700 Lumber Exchange Building, 10 South Fifth Street, Minneapolis, Minnesota 55402. On June 16, 2005, another copy of the Notice and Order for Hearing and Prehearing Conference was mailed to the Respondent at 18376 Quaker Avenue, Jordan, Minnesota 55352-1039. The Notice of and Order for Hearing and Prehearing Conference scheduled the prehearing conference for July 14, 2005.

2. The Notice of and Order for Hearing and Prehearing Conference that was mailed to the Respondent contained the following statement:

Respondent's failure to appear at the prehearing conference or the hearing may result in a finding that the Respondent is in default, that the Board's allegations contained in this Notice and Order may be accepted as true, and its proposed action may be upheld.

3. The Respondent did not appear at the July 14, 2005, Prehearing Conference. Respondent did not contact the Board or the Administrative Law Judge to request a continuance. Neither the Respondent nor his attorney filed a Notice of Appearance in this matter.

4. The allegations set forth in the Notice and Order for Hearing and Prehearing Conference are deemed proved and are incorporated into these Findings by reference.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The POST Board and the Administrative Law Judge have subject matter jurisdiction herein pursuant to Minn. Stat. §§ 214.10 and 14.50.

2. The Respondent was given timely and proper notice of the Prehearing Conference in this matter.

3. The POST Board has complied with all relevant procedural requirements of statute and rule.

4. Under Minn. Rule 1400.6000 the Respondent is in default as a result of his failure to appear at the scheduled Prehearing Conference.

5. Under Minn. Rule 1400.6000 when a party defaults, the allegations and the issues set out in the Notice of and Order for Prehearing Conference and Hearing may be taken as true and deemed proved. The Administrative Law Judge therefore takes those allegations and issues as true and deemed proved.

6. Based upon the facts set out in the Notice and Order for Hearing and Prehearing Conference, the Respondent has violated Minn. R. 6700.1700 L, and is subject to disciplinary action by the POST Board.

7. Disciplinary action against the Respondent is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Board take disciplinary action against the Peace Officer License of Tim Clayton Weierke.

Dated this 18th day of July, 2005.

s/Kathleen K. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Default.