



STATE OF WISCONSIN
Law Enforcement Standards Board

In the Matter of Noah Gausman

FINAL DECISION AND ORDER
Case No. LESB-23-0003

On September 6, 2023, the State of Wisconsin Law Enforcement Standards Board (“LESB”) denied Noah Gausman’s request for a waiver of requirements to regain law enforcement employment within in a three-year time frame as provided by in the LESB Policy and Procedures Manual.

Gausman filed a written request for a hearing on the Bureau’s decision before the Executive Committee of the Law Enforcement Standards Board (the “Board”) pursuant to Wis. Stat. § 227.42. The hearing was held on November 14, 2023, via Zoom videoconferencing. Assistant Attorney General S. Michael Murphy served as hearing examiner pursuant to Wis. Stat. § 227.46(1) and the Board’s written policies and procedures.

After receiving and deliberating on all the evidence, the Executive Committee voted to affirm the LESB’s September 6, 2023, decision. Pursuant to Wis. Stat. § 227.46(2), the hearing examiner then prepared a proposed written decision containing the findings of fact, conclusions of law, discussion, and a decision.

The proposed decision was served on the parties via e-mail. The parties were given the opportunity, under Wis. Stat. § 227.46(2), to present written objections. The Board considered the written objections that were submitted.

On March 5, 2024, the Board convened and voted to adopt the proposed written decision as the final decision of the Board in this matter.

WHEREFORE, it is ordered that the attached proposed decision is hereby incorporated by reference into this final decision and order and is formally adopted as the final written decision and order of the Board in this matter, in accordance with Wis. Stat. §§ 227.46(2) and 227.47(1).

NOTICE OF APPEAL RIGHTS

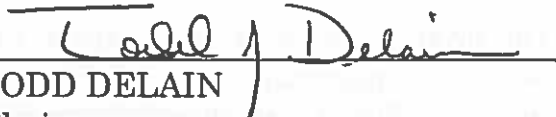
Set out below are the alternative methods by which a person may request review of the Board's final decision and order in this matter. This notice is provided pursuant to Wis. Stat. § 227.48(2).

Any person aggrieved by the Board's final decision and order may petition for rehearing as provided in Wis. Stat. § 227.49. A petition for rehearing must be filed with the Board within 20 days after service of the final decision and order. The petition must specify in detail the grounds for the relief sought and supporting authorities. Rehearing may only be granted for the reasons set out in Wis. Stat. § 227.49(3). A petition for rehearing is not a prerequisite to judicial review under Wis. Stat. §§ 227.52 and 227.53.

Any person aggrieved by the final decision and order has a right to petition for judicial review in circuit court, as provided in Wis. Stat. §§ 227.52 and 227.53. The petition for judicial review must be filed in circuit court and must be served, either in person or by certified mail, on all parties designated as such in the final decision and order. The petition for judicial review must be served and filed within 30 days after service of the final decision and order. If a rehearing is requested as noted in the preceding paragraph, any party seeking judicial review must serve and file a petition for judicial review within 30 days after service of the order disposing of the rehearing application or within 30 days after final disposition by operation of law of the rehearing application. Persons wishing to petition for judicial review are advised to closely examine and strictly comply with all the requirements of Wis. Stat. §§ 227.52 and 227.53.

Dated this 12th of March, 2024.

By:


TODD DELAIN
Chairperson
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ENFORCEMENT STANDARDS BOARD
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STATE OF WISCONSIN
Law Enforcement Standards Board

In the Matter of Noah Gausman

PROPOSED DECISION
Case No. LESB-23-0003

PRELIMINARY RECITALS

On September 6, 2023, the State of Wisconsin Law Enforcement Standards Board (the “Board”) denied Noah Gausman’s request for a waiver of training requirements to regain law enforcement employment.

Gausman requested a hearing on the Board’s decision pursuant to Wis. Stat. § 227.42. The hearing was held before the Board’s Executive Committee on November 14, 2023, via Zoom videoconferencing. Assistant Attorney General S. Michael Murphy served as hearing examiner pursuant to Wis. Stat. § 227.46(1) and the Board’s written policies and procedures.

Pursuant to Wis. Stat. § 227.47(1), the parties to this proceeding are certified as follows:

State of Wisconsin
Law Enforcement Standards Board
17 West Main Street, P.O. Box 7070
Madison, WI 53707-7070

Noah Gausman
12878 County Road D
Grantsburg, WI 54840

Training and Standards Bureau
Division of Law Enforcement Services
Wisconsin Department of Justice
17 West Main Street, P.O. Box 7070
Madison, WI 53707-7070

FINDINGS OF FACT

1. Noah Gausman completed law enforcement officer training in May 2014. (Appeal Hearing Exhibits, meeting of board's Executive Committee ("Ex. __: __").) (Ex. 2.)

2. Mr. Gausman has been employed part-time by law enforcement agencies as follows: Balsam Lake Police Department from May 9, 2015, to June 27, 2019; Frederic Police Department from July 24, 2015, to November 14, 2018; Frederic Police Department December 20, 2020, to July 30, 2021; Star Prairie Police Department from January 1, 2021, to September 1, 2022. (Ex. 2-3.) Hearing Transcript ("Tr. __"). (Tr. 19:11-17, 23:14-21.)

3. Mr. Gausman has not held full time law enforcement employment in Wisconsin. (See Ex. 2, 4; Tr. 21-22.)

4. Mr. Gausman was not employed as a law enforcement officer for approximately 1.5 years between June 28, 2019, and December 20, 2020, before being hired by the Frederic PD on December 20, 2020, and then the Star Prairie PD on January 1, 2021. (Ex. 2-3; see Tr. 23:5-18.)

5. Mr. Gausman did not complete law enforcement training during the 2018/2019 fiscal year or the 2019/2020 fiscal year. (Tr. 36-38.) He resumed annual training in March 2021. (Tr. 38.)

6. Mr. Gausman was not employed as a law enforcement officer for approximately nine (9) months between September 1, 2022, and May 26, 2023, prior to being hired by the Balsam Lake Water Safety Patrol on May 26, 2023. (Ex. 2-3; Tr. 19:11-15, 23:18-23.) As Mr. Gausman stated in his submissions: "I resigned in good standing from the Star Prairie Police Department on September 1, 2022. I was hired with Balsam Lake Water Safety Patrol on May 26, 2023." (Ex. 3.)

7. The Wisconsin Department of Justice Training and Standards Bureau ("TSB") became aware of Mr. Gausman's training and employment gaps during an audit of officer recertification training. (Ex. 2-3; Tr. 24:3-6, Tr. 36-37.) Balsam Lake Water Safety Patrol was then notified that Mr. Gausman did not qualify for certification as a law enforcement officer. (Tr. 24:16-19.)

8. In August 2023, Gausman requested an extension or wavier of training requirements for recertification. (Tr. 21:7-10; see Ex. 4.)

9. The Board reviewed the request at its September 6, 2023, meeting and denied the request. (Ex. 4; *see* Tr. 21:7-17.)

10. On September 7, 2023, Wisconsin Department of Justice Training and Standards Bureau Compliance Officer Gerald Mullen notified Gausman that on September 6, 2023, the Board denied his request for a waiver. The notification included an explanation that Gausman would need to complete the full 720-hour Law Enforcement Preparatory Training Academy by May 26, 2024, before he is considered for certification as a Law Enforcement Officer by the LESB. (Ex. 4.)

11. Gausman requested a hearing on that Board decision in a September 21, 2023, via email to Steven Wagner, Administrator of the Division of Law Enforcement Services at the Wisconsin Department of Justice. (Ex. 6.)

DISCUSSION

Considering the November 14, 2023, hearing testimony and the exhibits admitted into the record, the Board affirms the September 6, 2023, decision to deny Gausman's request for a waiver of training requirements for recertification.

The Board is charged by statute with the responsibility of certifying and decertifying individuals as qualified to be employed as law enforcement officers, and establishing and enforcing educational and training standards for law enforcement officers in Wisconsin. Wis. Stat. § 165.85(3)(b), (3)(c), (3)(cm), (4)(a); Wis. Admin. Code LES § 6.02.

An officer's certification is terminated when such officer leaves law enforcement employment. Specifically, "upon the termination of employment of any law enforcement . . . officer, that officer's certification shall be terminated until there is received by the bureau from a new employer the verification of employment standards form required by rules of the board. The board shall then determine the amount of training, if any, required of the officer for recertification." Wis. Admin. Code LES § 6.02.

A law enforcement officer who was previously certified and left employment, such as Mr. Gausman, may request recertification without additional training. Wis. Admin. Code LES § 3.05. As relevant here, if the officer left employment, and therefore lost certification, within the past two years, then the Board may, in its discretion, recertify the officer without additional training. Wis. Admin. Code LES § 3.05(2).

Consistent with the Board's authority, the Board maintains a Policy & Procedures Manual ("Manual") that discusses the circumstances under which training may, or may not, be required for recertification. As relevant here, the Manual provides:

A law enforcement or tribal law enforcement officer who holds law enforcement or tribal law enforcement employment for less than one (1) consecutive year full-time prior to termination of employment, has three (3) years from the date they successfully completed preparatory law enforcement officer training, or three (3) years from the date they last held law enforcement employment for at least one (1) consecutive year full-time, to regain employment as a law enforcement or tribal law enforcement officer. Failure to gain or regain employment within the time frames specified will require re-completion of the entire preparatory law enforcement officer training program to regain eligibility for certification as a law enforcement or tribal law enforcement officer.

(Manual at 47.) These standards help ensure that law enforcement officers are sufficiently trained, including by requiring that Wisconsin officers are held to the same training standards as officers transferring to employment in Wisconsin from other states. (Tr. 20-21.) This Manual provision has been in place since March of 2021. (Ex.1; Tr. 20:22-23; 40:16-18.) The Manual containing the policy is publicly published and publicly available, including on the Law Enforcement Standards Board website.¹

Here, Mr. Gausman has never held full time law enforcement employment and has significant employment gaps since his 2014 completion of law enforcement training. He was not employed as a law enforcement officer between May 15, 2014, and May 9, 2015; between June 28, 2019, and December 20, 2020; or between September 1, 2022, and May 26, 2023, for a total of over three years of non-law enforcement employment since he completed training. (Ex. 2; Tr. 19:11-15, 23:18-23.) It is undisputed that he was not employed as a law enforcement officer for approximately nine (9) months between September 1, 2022, and May 26, 2023. (Ex. 2, 5; see Tr. 23:5-23, Tr. 19:11-15.)

¹ <https://wilenet.widj.gov/training-standards/law-enforcement-standards-board-lesb> (last accessed December 21, 2023.)

Additionally, Gausman did not complete mandatory annual recertification training during the 2018/2019 fiscal year or the 2019/2020 fiscal years. That annual training is required to continue to be a certified law enforcement officer in Wisconsin. Wis. Stat. § 165.85(4)(a)7.

Mr. Gausman left law enforcement employment, and therefore became decertified, on September 1, 2022. Mr. Gausman now seeks recertification for the purpose of new employment with the Balsam Lake Water Safety Patrol. (Ex. 2; Tr. 19:11-15, 23:18-23.) However, May 26, 2023, is approximately nine years from Mr. Gausman's law enforcement officer training, and he has never held full time law enforcement employment. These are considerations relevant to the Board's discretion to waive, or not waive, recertification requirements when person who was previously certified seeks new law enforcement employment. Wis. Admin. Code LES § 3.05. In this instance, the Board declined to waive the requirements.

This outcome is particularly appropriate here, where it has been nearly 10 years since Mr. Gausman completed initial training, he has never held full-time law enforcement employment, he has periods of no law enforcement employment since his initial training, and his annual training has periods of lapse. The Board is committed to ensuring that Wisconsin law enforcement officers have proper and current training. Here, that requires that Mr. Gausman complete a Law Enforcement Preparatory Training Academy before recertification as a law enforcement officer.

In Mr. Gausman's submissions, he primarily argues that when he resigned from the Village of Balsam Lake Police Department in 2019, he was told that he had three years to regain employment without re-training, despite his part-time status. (Ex. 3.) He then argues that he was unaware of any change to that practice, as reflected in the Manual, when he resigned from the Star Prairie Police Department on September 1, 2022. (Ex. 3, 5.) At the hearing, he stated that he was unaware that the Manual including updates are published and publicly available. (Tr. 33:14-24.)

However, Wis. Admin. Code LES § 3.05 gives the Board discretion on whether to waive his training requirements upon a request for recertification. The Board here has properly declined to waive the requirement in light of Gausman's training and employment history.

We understand from December 22, 2023, letter from an attorney writing on behalf of Mr. Gausman that Mr. Gausman now argues that the three-year discussion in the Manual, referred to by the TSB in its initial decision, is an unpromulgated rule. We appreciate that view, but the Board relies for its decision on Wis. Admin. Code LES § 3.05, which gives it discretion whether to waive the training requirement in particular cases like Mr. Gausman's. Based on these facts, as discussed above, the Board declines to waive training requirements.

Nonetheless, to Mr. Gausman's point, the current Manual provision has been in place since March 2021 and is publicly available. (Tr. 20:22-23; 40:16-18.) The Manual provision was therefore in place when Mr. Gausman resigned from the Star Prairie Police Department on September 1, 2022. Mr. Gausman's unawareness of the Manual provision when he resigned from part-time employment is not grounds to disturb the Board's decision to decline his request for a waiver of the training requirements.

In sum, the November 14, 2023, hearing evidence does not persuade the Board that the September 6, 2023, decision was incorrect. Mr. Gausman did not show any error or improper exercise of discretion. Accordingly, for the reasons stated in this decision, the Board AFFIRMS the September 6, 2023, decision.

CONCLUSIONS OF LAW

1. Under Wis. Stat. § 165.85(3)(c), the Board may certify persons as being qualified to be law enforcement officers.
2. Under Wis. Stat. § 165.85(3)(cm)2, the Board may decertify a law enforcement officer who fails to comply with a rule, policy, or order of the board relating to curriculum, training or recruitment.
3. Under Wis. Stat. § 165.85(4)(a)7, "no person may continue as a certified law enforcement or tribal law enforcement officer unless that person maintains law enforcement or tribal law enforcement employment and completes annual recertification training. Any officer who is subject to this subdivision shall complete at least 24 hours of recertification training each fiscal year beginning in the fiscal year following the fiscal year in which he or

she is certified as a law enforcement or tribal law enforcement officer by the board.”²

4. Under Wis. Admin. Code LES § 6.02(1), “upon the termination of employment of any law enforcement . . . officer, that officer's certification shall be terminated until there is received by the bureau from a new employer the verification of employment standards form required by rules of the board. The board shall then determine the amount of training, if any, required of the officer for recertification.”

5. Under Wis. Admin. Code LES § 3.05(2), a law enforcement officer who was previously certified within the past two years may, in the Board's discretion, be recertified without additional training. Such officer can request waiver of the training requirements for recertification. Wis. Admin. Code LES § 3.05. The Board may then make a discretionary decision on that request.

6. Mr. Gausman did not complete at least 24 hours of recertification training each fiscal year between 2018 and 2020 and therefore became ineligible to continue as a law enforcement officer.

7. Mr. Gausman left law enforcement employment, and therefore became decertified, on September 1, 2022.

8. On September 6, 2023, the Board properly exercised its discretion to deny Gausman's request for a waiver of training requirements. The Board properly advised Gausman that he is required to complete Law Enforcement Preparatory Training before being considered for certification as a Law Enforcement Officer in Wisconsin.

9. Accordingly, the Board's September 6, 2023, decision is Affirmed.

DECISION

The Board's September 6, 2023, decision is **AFFIRMED**.

² Wis. Stat. § 165.85(4)(a)(7) and (8) contain an exception for a Sheriff that is not relevant here.

NOTICE OF RIGHT TO FILE OBJECTIONS

Any party adversely affected by the attached proposed decision may file objections to it with the Board as provided in Wis. Stat. § 227.46(2). The objections must be submitted in writing and must briefly state the reasons and authorities for each objection. The objections may be accompanied by written argument. The written objections and any accompanying argument must be submitted to Assistant Attorney General S. Michael Murphy, Wisconsin Department of Justice, P.O. Box 7857, Madison, Wisconsin 53707-7857. Objections and arguments may also be submitted via e-mail to murphysm@doj.state.wi.us. All written objections and arguments must be received no later than midnight on February 27, 2024.

At its meeting on March 5, 2024, the Board will consider the proposed decision and any objections that may have been submitted and will thereafter issue a final written decision. The final written decision will be accompanied by a notice of appeal rights setting out the alternative methods by which a person may request administrative or judicial review of that decision.

Dated Tuesday, February 27, 2024.

STATE OF WISCONSIN
LAW ENFORCEMENT STANDARDS BOARD

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