

CAUSE NO. 10-05(M)

NAME: BELINDA MARRELL

ADMINISTRATIVE LAW JUDGE: GARY W. BIPPUS

DATE: July 2, 2010

COMMISSION ACTION: AFFIRMED

FINDINGS OF FACT

Criminal conviction

1. On or about June 3, 2004 an armed robbery took place at a Speedway Gas station in Portage IN. On or about June 8, 2004 a robbery took place at the Days Inn Motel in Portage IN. Based on the probable cause affidavit stipulated into evidence by counsel for the parties, Ms. Marrell participated in both robberies and was charged with two counts of aiding in robbery as a Class B Felony. Her involvement amounted to driving the getaway car and in driving her codefendants around the subject businesses prior to the robberies to scout them before her codefendants entered the businesses. She personally entered the Days Inn to determine how many employees were present. There was no evidence that she received any money taken from either business. Ms. Marrell was arrested on or about June 10, 2004 and charged with two counts of assisting a robbery as a class B Felony in the Porter Superior Court.
2. Ms. Marrell's arrest and charging ultimately culminated in her pleading guilty to one count as a B Felony on or about May 6, 2005. The other count was dismissed and she was sentenced to six (6) years in the Indiana Department of Correction. She was placed on Home Detention with a reporting component. Subsequent to completing that, Ms. Marrell was placed on formal probation, subject to the normal and usual court costs and restitution by making periodic payments throughout the probationary period.
3. On or about June 16, 2010 the Porter Superior Court judgment under date of June 20, 2005 was modified to show that Ms. Marrell was convicted of a Class C felony instead of a Class B felony.
4. This administrative review case was assigned to the administrative law judge at the January 22, 2010 meeting of the Emergency Medical Services Commission. Ms. Marrell's attorney entered his appearance in this matter on or about May 17, 2010.

EMT education and denial of certification

5. Ms. Marrell first started training as an Emergency Medical Technician in 2002 but did not complete her studies at that time. She also worked as a nursing assistant after graduating from high school.
6. Ms. Marrell successfully completed her Emergency Medical Technician training in February of 2009. She completed her practical skills test that same month and also passed her written board test. Her testimony was that she did very well with both her academic studies and the practical skills of her EMT training.
7. Ms. Marrell testified that an instructor of hers from the Emergency Medical Technician class she took told her that she had been certified as an EMT. The instructor knew this because this instructor had seen Ms. Marrell's license number on the internet.
8. Ms. Marrell testified that she began working as a certified EMT after being told of this certification number by her instructor.
9. The Findings and Order of the Indiana Department of Homeland Security under date of November 26, 2009 were mailed to Ms. Marrell. That document notified her of the denial of certification. She admitted receipt of that document.
10. On or about January 13, 2010 Ms. Marrell caused a request for administrative review to be sent to the Indiana Department of Homeland Security.
11. Ms. Marrell testified that she continued to practice as an EMT after having received the document advising that her certification was denied because of her belief that her request for administrative review served as a, "stay" allowing her to continue work as an EMT. No request for a stay has been received by the administrative law judge and the document requesting administrative review does not appear to make any such request

CONCLUSIONS OF LAW

1. The Department of Homeland Security is an agency within the meaning of I.C. 4-21.5.
2. The Agency is the state entity charged with the responsibility of certifying

Emergency Medical Technicians within the State of Indiana.

3. I.C. 4-21.5, I.C. 16-31-3 and 836 IAC apply to this proceeding.

4 Pursuant to IC 16-31-3-14 (a):

A person holding a certificate issued under this article must comply with the applicable standards and rules established under this article. A certificate holder is subject to disciplinary sanctions under subsection (b) if the department of homeland security determines that the certificate holder:

is convicted of a crime, if the act that resulted in the conviction has a direct bearing on determining if the certificate holder should be entrusted to provide emergency medical services.

5. Pursuant to IC 16-31-3-14(f):

Except as provided under subsection (a), subsection (g), and section 14.5 [IC 16-31-3-14.5] of this chapter, a certificate may not be denied, revoked, or suspended because the applicant or certificate holder has been convicted of an offense. *The acts from which the applicant's or certificate holder's conviction resulted may be considered as to whether the applicant or certificate holder should be entrusted to serve the public in a specific capacity.*"

(Emphasis added)

6. Pursuant to IC 16-31-3-14.5:

The department of homeland security may issue an order under IC 4-21.5-3-6 to deny an applicant's request for certification or permanently revoke a certificate under procedures provided by section 14 [IC 16-31-3-14] of this chapter if the individual who holds the certificate issued under this title is convicted of any of the following:

* * * *

(12) A crime of violence (as defined in IC 35-50-1-2(a)).

7. Pursuant to IC 35-50-1-2(a), "As used in this section, "crime of violence" means the following:

* * * *

(12) Robbery as a Class A felony or a Class B felony."

8. Ms. Marrell's conviction for robbery was initially as a Class B Felony and that judgment of conviction was entered in the Porter Superior Court on

June 20 2005. That judgment was modified from a Class B felony to a Class C felony on or about June 16, 2010.

9. Modifying the judgment in this fashion does not modify the underlying facts which led to the conviction and which were admitted into evidence in this matter. Item 4 of the initial order denying certification under date of November 26, 2009, the amended order denying certification under date of June 25, 2010 and the subsequent order reveals that the denial was based on a consideration of the *acts* which led to a criminal conviction and not the conviction itself.
10. At the very least, the crime of robbery involves the robbery perpetrator exploiting the robbery victim's relatively weaker position as compared to the robber. That might be by the use of a weapon, by the use of force or the threat of force or some other intimidating factor. Persons in need of emergency medical services are almost always going to be in a relatively weaker position.
11. The acts which support Ms. Marrell's criminal conviction are acts which have a direct bearing on determining if the certificate holder should be entrusted to provide emergency medical services.
12. Any item which is denominated a Conclusion of Law which should be considered a Finding of Fact is hereby incorporated by reference into the Findings of Fact.

DECISION AND ORDER

The decision and order of the Indiana Department of Homeland Security issued under date of November 26, 2009, as subsequently amended to reflect revocation rather than denial of certification to Ms. Marrell, should be, and are, affirmed in all regards.

Accordingly Ms. Marrell's certification as an Emergency Medical Technician is revoked for a period of seven years beginning on November 9, 2009.

