

CAUSE NO: 10-20M

NAME: TIMOTHY C. CLARK

ADMINISTRATIVE LAW JUDGE: GARY W. BIPPUS

DATE: OCTOBER 26, 2011

COMMISSION ACTION: REFERRED BACK THE ADMINISTRATIVE LAW JUDGE FOR FURTHER REVIEW

FINDINGS OF FACT

1. Mr. Clark satisfied the educational requirements to become an EMT-B on or about February 4, 2010 and applied for certification as an EMT-B.
2. On Mr. Clark's application for certification he indicated that he had been charged or convicted of a crime or crimes other than minor traffic violations.
3. At the request of the Indiana Department of Homeland Security, Mr. Clark provided additional information regarding his arrests and convictions.
4. Mr. Clark was charged with Felony Murder and Arson on or about September 30, 1987 for incidents which occurred on July 13, 1987. He was found guilty of both charges on or about March 3, 1988 at the conclusion of a jury trial.
5. Mr. Clark was sentenced to prison for a period of forty (40) years for these crimes and served approximately sixteen (16) years prior to his release on parole.
6. Mr. Clark's date of birth is May 6, 1967. On July 13, 1987 he would have been approximately two months past his 20th birthday.
7. Mr. Clark testified that the 1987 incident involved horseplay with fireworks in or near a multiple unit apartment building. That building ignited and burned and several residents were injured and one died as a result of the fire.
8. Mr. Clark testified that he attempted to rouse the residents of the building once the fire started to get them out of the burning building.
9. Mr. Clark accepts complete responsibility for his actions in 1987 and the results of those actions.
10. Mr. Jim Flueckiger, the administrator at the Heritage at Huntington nursing home and Mr. Clark's employer for five years, was present and testified that he was aware of Mr. Clark's criminal history before hiring him. He testified that Mr. Clark is a maintenance man at Heritage at Huntington. Mr. Clark also routinely has patient/client contact and transports patients/clients. Mr. Flueckiger is pleased with Mr. Clark's work performance and offered to personally vouch for Mr. Clark's character.

11. Ms. Lisa Cook, the head of nursing at Heritage at Huntington, met Mr. Clark through both of them working at Heritage at Huntington. Ms. Cook and her husband are friends with Mr. Clark and his wife. Ms. Cook knows of Mr. Clark's criminal history and finds him to be patient, compassionate, quiet and gentle. She would willingly trust her children to Mr. Clark's care and would like him to get a chance to give back to his community.
12. Mr. Jeff Cook, husband of Ms. Lisa Cook and Assistant Chief of the Marion, Indiana, Fire Department, has known Mr. Clark for five years through his wife being a co-worker with Mr. Clark at Heritage at Huntington. Chief Cook would like to see Mr. Clark get a chance to be an EMT and believes he would make a good one. Chief Cook would attempt to help Mr. Clark find employment as an EMT if Mr. Clark were to be certified.
13. Mr. Clark received a Bachelor of General Studies degree, *Summa Cum Laude*, from Ball State University in May of 1999 and an Associate of Science degree in Industrial Maintenance Technology from Indiana Vocational Technical College in May of 1992. He also received a Power Engineers Certification in August of 2005.
14. Mr. Clark admitted seven letters of recommendation into evidence; one of which was from his wife and the rest from classmates, friends and coworkers. None of those letters contains a recitation demonstrating that the writer has knowledge of Mr. Clark's criminal history.
15. Any item which is denominated a Finding of Fact which should be considered a Conclusion of Law is hereby incorporated by reference into the Conclusions of Law.

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 I.C. 16-31-3-14(d) the Indiana Department of Homeland Security has discretion to deny certification to a person who would have been subject to discipline had that person been a certificate holder. A certificate holder would be subject to discipline if convicted of a crime that would have a direct bearing on whether that person should be entrusted to provide emergency medical services.

5. Pursuant to Indiana Code 35-42-1-1 (2), “A person who: (2) kills another human being while committing or attempting to commit arson, burglary, child molesting, consumer product tampering, criminal deviate conduct, kidnapping, rape, robbery, human trafficking, promotion of human trafficking, sexual trafficking of a minor, or carjacking; commits murder, a felony.”
6. Pursuant to Indiana Code 35-43-1-1 (a), “A person who, by means of fire, explosive, or destructive device, knowingly or intentionally damages:
 - 1) a dwelling of another person without the other person's consent;
 - 2) property of any person under circumstances that endanger human life;
 - 3) property of another person without the other person's consent if the pecuniary loss is at least five thousand dollars (\$5,000); or
 - 4) a structure used for religious worship without the consent of the owner of the structure;commits arson, a Class B felony. However, the offense is a Class A felony if it results in either bodily injury or serious bodily injury to any person other than a defendant.”
7. Murder and Arson are crimes of violence.
8. Murder and Arson are crimes which have a direct bearing on whether a person should be entrusted to provide emergency medical services. A person who is requesting and receiving such services is often in a very vulnerable state and unable to fully protect themselves. Further, in many instances the provider of the emergency medical services will have come into the person’s home or other private place where the person is even more cut off from outside assistance from passersby, neighbors or law enforcement officers.
7. 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

June 30, 2010 denying certification to Mr. Clark should be, and is, affirmed in all regards.

Notwithstanding this decision, the Administrative Law Judge commends Mr. Clark's efforts to rehabilitate his life.

CAUSE NO. 10-20

NAME: TIMOTHY C. CLARK

ADMINISTRATIVE LAW JUDGE: GARY W. BIPPUS

DATE: JANUARY 31, 2011

COMMISSION ACTION: AFFIRMED

SUPPLEMENTAL FINDINGS OF FACT

1. The supplemental evidence submitted by the Indiana Department of Homeland Security contains no information or reference to fireworks or horseplay with fireworks as related by Mr. Clark at his first hearing.
2. Mr. Clark did not advise the ALJ at his first hearing, while under oath, that there existed an allegation that he was a volunteer firefighter who reported to the scene of the fire he set.
3. Mr. Clark did not advise the ALJ at his first hearing, while under oath, that there was an allegation that he had transported a liquid accelerant, gasoline, to the fire scene.
4. Mr. Clark did not advise the ALJ at his first hearing, while under oath, that there was an allegation that he had used a gallon of gasoline in a hallway of the apartment building to start the fire that was the subject of the Arson and Murder charges.
5. Mr. Timothy Clark was convicted and found guilty of the crimes of Felony Murder and Arson at the conclusion of a jury trial in Allen County Indiana in 1988.
6. In July of 1987 Mr. Clark was a volunteer firefighter for the St. Joe Township, Allen County, Volunteer Fire Department.
7. On or about July 13, 1987 Mr. Clark poured a gallon of gasoline on the floor inside a multi-unit apartment building at 6800 Ramblewood Drive, Fort Wayne Indiana and ignited the

gasoline.

8. In the course of the subsequent fire ten (10) people were injured, one of them fatally. Mr. Clark was one of the people who received burn injuries in this fire.

9. Mr. Clark left the scene of the fire he started and went to a St. Joe Township fire station as he would when responding to other fires, put on his firefighting gear, and rode the fire truck back to the fire he started. When he arrived there the pain of the turnout coat touching his burns was more than he could bear and he attempted to make people believe that he had been burned fighting the fire. At least one of the other firefighters who had ridden to the fire on the truck with Mr. Clark was an eyewitness to the fact that Mr. Clark had not come in contact with the fire since the firefighters had arrived at the fire.

10. Ms. Cheryl Cureton died in this fire from smoke inhalation in her bed.

11. Any item which is denominated a Finding of Fact which should be considered a Conclusion of Law is hereby incorporated by reference into the Conclusions of Law.

SUPPLEMENTAL 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 I.C. 16-31-3-14(d) the Indiana Department of Homeland Security has discretion to deny certification to a person who would have been subject to discipline had that person been a certificate holder. A certificate holder would be subject to discipline if convicted of a crime that would have a direct bearing on whether that person should

be entrusted to provide emergency medical services.

5. I.C. 16-31-3-14(a)(1) and (5) provide:

” (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:

(1) engaged in or knowingly cooperated in fraud or material deception in order to obtain a certificate, including cheating on a certification examination;

* * *

(5) 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[.]

6. The ALJ concludes that Mr. Clark’s behavior constitutes material deception in order to obtain a certificate. This is demonstrated in two ways. First, is his failure to advise the IDHS of the existence of the allegations which are contrary to the version of the crime facts he told in the course of his application. The second occurred at the October hearing. That is his failure to disclose the existence of those allegations while he was under oath.

7. The passage of some 23 years between the fire incident; with its criminal charges, trial, sentence and incarceration; could have made Mr. Clark’s memory of some details of the

events less than clear. The ALJ concludes that the passage of time alone could not erase one story from his memory and simultaneously replace it with a completely different story which makes him much less blameworthy (bringing and using gasoline to start a fire as compared to an accident with fireworks).

8. Even assuming that the truth about Mr. Clark's participation in the Arson and Murder is not contained in the supplemental evidence, he was aware that there were allegations quite different than the version he told the IDHS and the ALJ. Those allegations, as contained in the Informations and Affidavit were part of his criminal case and he did not bring those allegations to the attention of the IDHS or the ALJ.

9. The ALJ concludes that the forethought given to the intentional act(s) of carrying gasoline to the fire, pouring it out and lighting it in an occupied apartment building caused the charge to be Felony Murder, with its attendant 40 year sentence. Had the fire just been the very unfortunate result of horseplay with fireworks or through some other negligent act(s) or omission(s) the charge would have been a Manslaughter charge with a much lower sentence.

10. The ALJ concludes that Felony Murder and Arson are both types of crimes which have a direct bearing on determining whether Mr. Clark should be entrusted to provide emergency medical services.

11. 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 of the Administrative Law Judge after this hearing is the same as that reached after the first hearing. That is the decision and order of the Indiana Department of Homeland

Security issued under date of June 30, 2010 denying certification to Mr. Clark should be, and is, affirmed in all regards.