

IN THE MATTER OF

A complaint under s 74 of The Private Security Personnel and Private Investigators Act 2010 against **SAJID MEHMOOD**

HEARD virtually on 10 October 2023

APPEARANCES

Snr Constable S Su for NZ Police
S Mehmood – Certificate holder
F Gul Qaisrani – counsel for Mr Mehmood
S Singh – Interpreter

DECISION

[1] Police have applied to cancel Sajid Mehmood's security certificate as he has been convicted of indecent assault. Mr Mehmood wants to keep his certificate so that he can get a job as a security guard. Mr Mehmood says there is no risk to the public if he is allowed to work in security as his offending was at the lower end and did not involve violence. He says private security is now the only job open to him.

[2] Mr Mehmood also says the complaint should not have been accepted because it did not disclose a valid basis for a complaint. Even if it did, he says cancelling his certificate amounts to double jeopardy and is therefore a breach of the Human Rights Act.

[3] The issues I need to decide are:

- a) Was the complaint made under an appropriate ground?
- b) Is taking disciplinary action against Mr Mehmood following a conviction a breach of s 26 of the Bill of Rights Act?
- c) If not, should Mr Mehmood's COA be cancelled, or some other disciplinary action taken?

Was the complaint made under an appropriate ground?

[4] On 6 September 2023 Mr Mehmood was convicted of two offences of indecent assault and sentenced to 200 hours community work and 9 months supervision. Indecent assault is an offence under s 135 of the Crimes Act. It therefore fits within the definition of an offence of violence under s 4 of the Private Security Personnel and Private Investigators Act (the Act).

[5] Section 62(f)(vii) of the Act states that it is grounds for disqualification if a person has been convicted of an offence of violence within the last 7 years. Section 74(4) of the Act allows the police to lay a complaint against a certificate holder if one or more grounds for disqualification under s 62 now apply to the certificate holder.

[6] Even though Mr Mehmood's conviction fits within the definition of an offence of violence, counsel for Mr Mehmood submitted I could not conclude it amounted to violent offending as it did not include any violence. Such an argument is not only inconsistent with the definition of an offence of violence under the Act but also minimises the nature of Mr

Mehmood's offending. I accept Mr Mehmood's actions resulted in emotional or psychological harm to the victims rather than physical harm. However, as it involved unwanted and non-consensual touching it was by its very nature assault or an offence of violence.

[7] Mr Mehmood has been convicted of an offence of violence as defined by s 4 of the Act and therefore grounds for disqualification now apply to him. This is an appropriate ground for the police to make a complaint against a certificate holder.

[8] The fact that the complaint itself did not specifically state that the convictions were a disqualifying offence does not make it a nullity. The Notice of Hearing sent to Mr Mehmood with the updated complaint confirmed his convictions were grounds for disqualification under s 62 of the Act and that this was the basis for the complaint.

Does taking disciplinary action against Mr Mehmood amount to double jeopardy and therefore a breach of s 26 of the Bill of Rights Act?

[9] Mr Qaisrani argued that cancelling Mr Mehmood's certificate would be in breach of s 26 of the Bill of Rights Act as it amounts to double jeopardy. Section 26 provides that no one who is finally convicted of an offence shall be tried or punished for it again.

[10] Section 82 of the Act provides that it is a mandatory ground for the cancellation of a certificate if one or more grounds for disqualification under s 62 now apply to the certificate holder and I am satisfied that because of this, Mr Mehmood is no longer suitable to be a certificate holder. Mr Qaisrani however argues that the clear wording of s 82 of the Act should not be followed because it needs to be reinterpreted to make it consistent with the Bill of Rights Act.

[11] The disciplinary process of the Authority is not retrying Mr Mehmood for his offending. The key question to be determined is whether Mr Mehmood's offending makes him unsuitable to be a certificate holder. This is a stated consequence of his convictions rather than repunishing him for his offending.

[12] It would be a nonsense to reinterpret this section to be consistent with the Bill of Rights Act in the way suggested by Mr Qaisrani. It would mean that a security guard's certificate could never be cancelled following a disqualifying conviction or sentence no matter how serious. It would also mean that no other professional disciplinary body could ever cancel a person's licence or practicing certificate following a conviction.

[13] I therefore conclude that taking disciplinary action against Mr Mehmood following his convictions is not double jeopardy and is not a breach of s 26 of the Bill of Rights Act.

What is the appropriate disciplinary action?

[14] Mr Mehmood has been convicted of two offences of violence and therefore grounds for disqualification under s 62(f)(vii) now apply to him. This is a mandatory ground for the cancellation of Mr Mehmood's certificate. Therefore, I must cancel his certificate provided I am satisfied that Mr Mehmood's convictions mean he is no longer suitable to be a certificate holder.

[15] I may have considered a penalty short of cancellation if Mr Mehmood was an experienced security guard with an otherwise exemplary record and his offending had not occurred while he was working.

[16] I accept Mr Mehmood offended while working as a taxi driver rather than in private security. However, his conduct demonstrated a breach of trust and a lack of understanding or professional boundaries and how to interact with young women. I am not convinced Mr Mehmood fully appreciates how inappropriate his interactions were with the two women victims. This in turn raises concerns about whether he would interact appropriately with young women while working as a security guard.

[17] Although Mr Mehmood has held a security certificate for over seven years he says he has never worked in private security. He explained this was because he was unable to do so because of health issues he experienced following a brain injury. Mr Mehmood advised he is still unable to do lifting or labouring work. However, his doctor has cleared him for light work with no stress or tension. Mr Mehmood considers working as a security guard fits within this clearance.

[18] Mr Mehmood does not have a good understanding of the reality of working in private security. While there may be long periods of little action security jobs are not stress and tension free. Security guards are increasingly being challenged or abused by those they encounter while working. They frequently deal with confrontational or aggressive people and need the appropriate skills to deescalate potentially volatile situations. Mr Mehmood's explanation as to what he would do if confronted with such behaviour shows that at the very least he would need to undertake refresher training before starting work in security.

[19] Mr Mehmood's convictions are serious, and he is still to complete the sentence imposed. In particular, he has not started the counselling or courses that forms part of his supervision sentence conditions.

[20] Although Mr Mehmood's offending was towards the lower end in terms of seriousness I am satisfied that his two convictions for indecent assault make him unsuitable to be a certificate holder. Therefore, the appropriate penalty is the cancellation of Mr Mehmood's certificate of approval.

[21] Mr Mehmood's convictions and the cancellation of his certificate are grounds for disqualification for seven years. Despite this, I direct that he can reapply for a certificate once he has successfully completed his sentence, but to do so he must provide:

- A letter from his doctor confirming that she or he considers Mr Mehmood is suitable from a health perspective to work as a security guard.
- A letter from his perspective security employer confirming they know of his health issues and conviction history but are willing to offer him a job if he is granted a certificate.
- Confirmation that he has completed, or is booked in to complete, further de-escalation training and training on strategies to deal with argumentative and abusive behaviour in a security context.

Summary and Orders

[22] On 6 September 2023 Mr Mehmood was convicted of two offences of violence. I am therefore satisfied that grounds for disqualification under s 62 of the Act now apply to Mr Mehmood, and because of this, he is no longer suitable to be a certificate holder.

[23] Mr Mehmood's certificate of approval is cancelled effective from the date of this order.

DATED at Wellington this 20th day of October 2023



P A McConnell

Private Security Personnel Licensing Authority