

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *GS v Director-General, Department of Justice and Attorney-General* [2020] QCAT 172

PARTIES: **GS**
(applicant)

v

DIRECTOR-GENERAL, DEPARTMENT OF JUSTICE AND ATTORNEY-GENERAL
(respondent)

APPLICATION NO/S: CML331-18

MATTER TYPE: General administrative review matters

DELIVERED ON: 19 May 2020

HEARING DATE: 4 February 2020

HEARD AT: Brisbane

DECISION OF: Member Goodman

ORDERS: **The decision of the Director-General, Department of Justice and Attorney-General that the Applicant’s case is “exceptional” within the meaning of s 221(2) of the *Working with Children (Risk Management and Screening) Act 2000 (Qld)* is confirmed.**

CATCHWORDS: ADMINISTRATIVE LAW – ADMINISTRATIVE TRIBUNALS – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – review of decision by respondent to issue a negative notice

FAMILY LAW AND CHILD WELFARE – CHILD WELFARE UNDER STATE OR TERRITORY JURISDICTION AND LEGISLATION – OTHER MATTERS – blue card – where issue of negative notice – application for review – where applicant has a criminal history including assault – where Tribunal confirmed decision to issue a negative notice

Working with Children (Risk Management and Screening) Act 2000 (Qld) s6, s 221, s 226
Queensland Civil and Administrative Tribunal Act 2009 (Qld) s20

APPEARANCES & REPRESENTATION:
Applicant: Self-represented

Respondent: D Taylor

REASONS FOR DECISION

- [1] GS would like to have a Blue Card so that he can further his martial arts training. He had previously been issued with a Blue Card on 13 September 2016. Following the receipt of police information, GS's eligibility was re-assessed, and the respondent cancelled the Blue Card by issuing a negative notice. GS has applied to QCAT to review that decision.
- [2] GS says that he has been involved in karate for a number of years, and that he has now been honoured to receive an invitation to work with the juniors. This is a privilege, and an opportunity for GS to demonstrate selflessness and a commitment to contributing positively. He has worked hard to reach his current level, but requires a Blue Card to progress to higher ranking levels.
- [3] This is not an appeal decision, but a review. I am standing in the shoes of the original decision maker and must make the correct and preferable decision.¹ My decision making is governed by the provisions of the *Working with Children (Risk Management and Screening) Act 2000* (Qld) and the *Queensland Civil and Administrative Tribunal Act 2009* (Qld). The paramount consideration is the welfare and best interests of children.²
- [4] GS has a criminal history as follows:
- (a) 18 February 1999: use insulting words, obstruct police officer. Convicted and fined \$350.
 - (b) 29 January 2003: common assault. Convicted and fined \$500, compensation, witness expenses and costs to be paid. Non-contact order made.
 - (c) 5 July 2010: contravene direction or requirement, failure to appear in accordance with undertaking. Conviction recorded. Fined \$500.
 - (d) 24 August 2010: failure to appear in accordance with undertaking. Conviction recorded. Fined \$750.
 - (e) 10 January 2011: breach of bail condition X 3. Conviction recorded. Fined \$750.
 - (f) 30 May 2011: assaults occasioning bodily harm. Proceedings discontinued.
 - (g) 3 September 2018: common assault, contravention of a domestic violence order. No conviction recorded. Fined \$800.
- [5] Police records provide details of the incidents. In particular:
- (a) *Common assault* – adult was 26 years old. He approached the complainant on the beach, verbally abused him and hit him in the face three times. GS confirmed at the hearing that he had hit the complainant, and that there had been an ongoing dispute between them.

¹ S 20(2) *Queensland Civil and Administrative Tribunal Act 2009*.

² S 6 *Working with Children (Risk Management and Screening) Act 2000*.

- (b) *Assault occasioning bodily harm* – adult was 33 years old. The complainant claimed that he was working with GS when there was a miscommunication which resulted in a physical altercation and GS punched the complainant in the face twice. GS lost his job as a result. GS admitted to police that he had punched the complainant twice to defend himself. Ultimately, criminal proceedings were discontinued.
- (c) *Common assault (DV)* – adult was 41 years old and shared a three year old son with the complainant. The complainant alleged that when the parties met to allow their son to return to her care, GS told her that she should “... do your fucking job as a parent and not give him energy drinks”. Following a verbal exchange, GS struck the complainant to the right side of her jaw with an open hand. When she approached GS to collect their son, he struck her again with an open hand to her temple. He then said “I’d do a lot fucking worse if I could, I’d strangle you to death you little junkie” as he held the complainant’s face with an open palm. They were interrupted by a witness before GS left in his vehicle yelling abuse as he drove off. A domestic violence order was made four days later.
- (d) *Contravention of Domestic Violence Order*- adult was 41 years old. Four days after the domestic violence order was made, the complainant met GS for the purposes of a contact handover. The complainant provided her version of events to police as follows. GS placed the child in his car then approached the complainant, saying “We have some stuff to sort out. I thought you were going to drop the charges. I thought you wanted peace.” He placed a pen and paper on the front bonnet of his car, saying “You have to fill this paperwork in now”. He held his mobile phone, saying “I have the police on the phone and you need to fill out the withdrawal of complaint form. I have already spoken to the police officer from Bribie police and they are helping me to withdraw the complaint”. The complainant refused to complete the form. GS snatched his pen from her and threw the paperwork in her direction. He got in his car, slammed the door and drove off, shouting out the window “She’s a druggo”. He later drove beside the complainant at traffic lights and stuck his middle finger up at her. Police viewed CCTV footage which corroborated the complainant’s claims.

- [6] GS has not been convicted of a “serious offence” as that term is defined in the Act. Accordingly, GS must be issued with a positive notice (and so a Blue Card) unless I am satisfied that this is an exceptional case in which it would not be in the best interests of children for him to receive a Blue Card.³

Background

- [7] GS provided written and oral evidence to the Tribunal. He has been a carpenter for around 20 years. He has two older children (19 and 18 years of age) and a younger son (five years of age). He says he has regular telephone contact with the older children, who live in NSW, and sees the younger child every second weekend and half of the school holidays. He says that he assists at school regularly.
- [8] GS says he has found a community of structure and support through his involvement in karate over the last approximately five years. He is seeking a Blue Card so that he

³ S 221 *Working with Children Act*.

can progress with his karate studies. GS identified benefits he has gained from his involvement in karate, describing his school as highly structured and highly disciplined. He has developed a respect for correct education with guidance and direction, integrity, being accountable for one's actions, and being able to lead. He says that practitioners develop a better control of their body and mind in conflict, and have the skills to recognise where potential conflict might arise and to avoid that conflict.

- [9] GS indicated that he believed that he had been denied a Blue Card due to poor communication with the respondent. He says that at the time the respondent was seeking information from him, he was under a lot of stress and put the letters aside, resulting in the cancellation of his Blue Card.
- [10] GS claims that he had been unable to properly defend himself against the most recent assault / DV charges as video evidence was not made available to him. He says that he ultimately pleaded guilty to end the proceedings, as they had been delayed due to the unavailability of video evidence.
- [11] GS denies that he is violent, aggressive or intimidating. In relation to the incidents involving his former partner, he states that he was very concerned that his three year old son was being given energy drinks which made him ill and resulted in poor behaviour. He was worried as his child was dehydrated and his heartbeat was "scary". He struggled with how to address this with the child's mother without the situation escalating. He sought the advice of other mothers and ultimately decided to raise the issue directly with her, knowing that the situation could "turn bad", although he did not expect things to get so volatile. He felt compelled to take some action for the safety of his son. He says that he had previously sought advice from friends and family, the police, and the department of child safety. GS says that during the incident his son was sitting in the car with some books and some fruit. GS claims that he was spat on by his former partner, and as a result put his hand out as an automatic reaction. His hand made contact with her face. He denies swearing or threatening the complainant, or using karate to hit her. GS says that he put his hand out as the complainant was too close to him. He says that when the complainant approached him again swearing and using closed fists, he put his other hand out. This happened a third time. As he left in his car, the complainant was holding the child in her arms while she was abusing him. He says that he and the complainant discussed the issue the following week and they sorted everything out. GS described his remorse at the incidents, describing it as a "disgusting mess".
- [12] GS identified "triggers" which increased the risk of him acting in an anti-social manner. He noted that he has historically reacted with a protective nature, particularly when people are doing the wrong thing which affects others, and most especially when vulnerable people are affected. He says that he acts to protect himself and others, and that the two most recent charges arose when people were in his space – coming too close to him.
- [13] GS says that he will avoid conflict in the future. He says that he is developing his awareness to avoid future conflict, although he cannot predict what he would do in the future if a similar situation arises. He says he is highly motivated to avoid similar situations arising in the future. In his submissions, GS states "I maintain that I am not an angry, violent or aggressive person but I admit that I have committed actions that have had an impact on others physically, emotionally and mentally due to my errors in judgement and poor decisions..."

- [14] When asked at the hearing about the impact of the assaults on the victims, GS stated that he guessed that they would have a “level of regret” regarding their involvement in the conflict, as he himself had. At the hearing, he denied any adverse impacts on his son from the contravention of the domestic violence order, as he says that it did not occur. In relation to the earlier incident which gave rise to the domestic violence order, GS considered that he had taken every measure that he could have taken to avoid impacting his young son. He points out that he placed the child in the car with the windows up to avoid him witnessing the incidents. He opined that the child may have been negatively impacted by being with the complainant after the incident. In submissions received after the hearing, GS acknowledges that his son would have been harmed as a result of the incident and that he had, inadvertently, contributed to that harm.
- [15] GS was unable to identify any other ways in which he could have resolved his concerns regarding the energy drinks.
- [16] The Department of Child Safety provided some material to assist the Tribunal. The material includes a description of a 2016 incident where GS removed his child from the care of his mother. GS says that he did so to protect his child’s safety when he was living in an environment of drug use and neglect. GS says that the police allowed the child to stay with him until a recovery order was made by the Family Court approximately six months later.
- [17] GS was unable to identify any other ways in which he could have resolved his concerns regarding the living conditions of the child, stating that there was no other possible way of managing the situation.
- [18] GS denies that he has a pattern of aggressive behaviour. He states that he has not seen a counsellor or received any other input in relation to aggression or anger management.
- [19] GS provided supportive evidence from a number of friends and associates. They describe GS as pleasant and caring. The Tribunal is assisted by these references but accepts the submissions of the respondent that limited weight should be placed on the assertion of the witnesses that GS was a suitable person to hold a Blue Card, as none of the witnesses were aware of GS’s criminal history.
- [20] GS submits that he is not a violent person. He says that he has made poor decisions in the past, which he continues to reflect on.
- [21] I must have regard to the matters set out in legislation⁴ and any other relevant matters. So far as the matters set out in the legislation are concerned, I find that:
- (a) GS’s history contains a number of criminal offences;
 - (b) The offences are not “serious offences”;
 - (c) The offences span a period from 1999 to 2018; and
 - (d) The offences indicate impulsivity and a lack of regard for the safety of himself and others. There is a pattern of threatening and violent behaviour.

⁴ S 226 *Working with Children Act*.

- [22] In determining whether this is an exceptional case in which it would not be in the best interests of children for GS to be issued with a positive notice, I have taken into account the legislative requirements, and the particular circumstances of this case. There is some evidence which supports GS's application (the protective factors), and some evidence which does not (the risk factors).
- [23] Protective factors identified are that GS has a good record of stable employment, and is committed to the practice of karate and the discipline and learnings of the practice. Further, he has the support of his witnesses who speak of his skills and good character. GS is motivated to avoid further incidents of aggression or conflict, and to that end has identified that he will try to avoid conflict situations, and that he has developed greater self control through his study and practice of karate. The Tribunal accepts that GS never intended to harm any child by any of his actions, and that he has, since the hearing, spent some time reflecting on the harmful effects of his behaviour, particularly on his son.
- [24] Risk factors include GS's history of aggression and violence when dealing with difficult situations, and his inability, even at the time of the hearing, to contemplate alternative ways to resolve conflicts. GS provided evidence and submissions urging the Tribunal to find that he was not violent or aggressive. The Tribunal finds that, at the time of the hearing, GS lacked insight into the causes, effects, and harm caused by his own behaviour. GS was not able to identify strategies which he uses to prevent a recurrence of his previous aggression. While he did not plan to hurt anyone, the evidence is that he has engaged in harmful and aggressive behaviour over many years. In his submissions, GS acknowledged that his behaviour had caused harm to others. He did not, however, identify how a repeat of the behaviour, and so the harm, was to be avoided.
- [25] The central focus of the legislation is the protection of children. GS has engaged in uncontrolled and violent behaviour over many years. In his submissions (although not at the hearing) GS acknowledges that his behaviour has caused harm. Despite GS's best intentions, he will be unable to avoid potentially difficult situations in the future. It is inevitable that challenging circumstances will arise again for GS, as they do for all community members. GS has historically reacted in an anti-social way to such challenges. He has not provided any evidence of skill development or implementation of a plan to avoid reacting to future challenges in the same way he has reacted to past challenges – with aggression.
- [26] A Blue Card is issued unconditionally and would allow GS to work unsupervised with children across a range of circumstances. GS has not demonstrated a capacity to respond to stressful situations in a thoughtful, mature and appropriate manner. He has engaged in aggressive behaviour over a number of years and has not demonstrated an ability to cope with difficult situations in a pro-social way. Accordingly, I am satisfied that this is an exceptional case in which it would not be in the best interests of children for GS to be issued with a Blue Card at this time. The respondent's decision is confirmed.

Non publication of applicant's identity

- [27] GS has a young son and I am satisfied that publication of GS's name could easily lead to the identification of that child. I am not satisfied that would be in the public interest. Accordingly, the reasons for decision will be published in a de-identified format.