

STATE OF NORTH CAROLINA
COUNTY OF MACON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
22 DOJ 03474

Emileigh Sands Petitioner, v. NC Sheriffs Education and Training Standards Commission Respondent.	PROPOSAL FOR DECISION
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This case came on for hearing on December 8, 2022, before the undersigned Administrative Law Judge David Sutton in Waynesville, North Carolina. This case was heard after Respondent requested, pursuant to N.C. Gen. Stat. § 150B-40(e), designation of an Administrative Law Judge to preside at the hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes.

APPEARANCES

Petitioner: Robert Hensley
461 E. Main Street
Sylva, North Carolina 28779

Respondent: Robert J. Pickett
Attorney for Respondent
Department of Justice
Law Enforcement Liaison Section
9001 Mail Service Center
Raleigh, North Carolina 27699-9001

ISSUE

Whether Petitioner's justice officer certification should be denied based upon the allegation that Petitioner made a material misrepresentation in violation of Commission rules when she failed to disclose prior marijuana usage on her 2015 Personal History Statement.

RULES AT ISSUE

12 NCAC 10B .0204(c)(1) and (c)(2)
12 NCAC 10B .0205

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge makes the following FINDINGS OF FACT.

In making the FINDINGS OF FACT, the undersigned Administrative Law Judge has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate facts for judging credibility, including, but not limited to, the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences, about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

FINDINGS OF FACT

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, both parties received notice of hearing, and that the Petitioner received by certified mail, the proposed denial letter, mailed by Respondent, the North Carolina Sheriffs' Education and Training Standards Commission (hereinafter "The Commission"), on July 28, 2022. (R. Ex. 2)

2. The Commission has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify deputy sheriffs and to revoke, suspend, or deny such certification under appropriate circumstances with valid proof of a rule violation.

3. Petitioner is an applicant for justice officer certification through the Macon County Sheriff's Office where she has worked since July 29, 2020. She previously held probationary criminal justice officer certification from the NC Criminal Justice Education and Training Standards Division from January 31, 2020 to July 24, 2020 with the Asheville Police Department. She also previously applied for corrections officer certification in 2015. (R. Ex. 3)

4. On her 2015 personal history statement, Petitioner disclosed no prior drug use. (R. Ex. 6) On her Asheville Police Department personal history statement in 2019, she disclosed using marijuana in 2014, 2015, and 2016. (R. Ex. 8) On her personal history statement in 2020 for Macon County, she disclosed marijuana usage in 2015. (R. Ex. 5)

5. Petitioner provided a statement to the Commission that she did not disclose the 2015 marijuana usage in 2015 because it happened after the date of application. (R. Ex. 7) Petitioner provided an additional statement to the Commission that she used marijuana in 2013. (R. Ex. 4)

6. Petitioner provided no explanation as to why she did not disclose the 2014 usage other than it was a mistake or failure of recollection, however, Petitioner credibly testified that she

had later figured out the usage she was referring to was 2014 and corrected this in future discussions.

7. Petitioner appeared at the hearing to have a genuinely bad memory while testifying. Her explanation of having a poor memory as the reason for not listing 2014 and 2016 marijuana usage on her Macon County Personal History Statement is credible. However, she provided no adequate explanation for omitting 2014 and 2015 marijuana use from her 2015 Personal History Statement.

8. Petitioner appeared to be genuinely remorseful about her disclosure mistakes.

9. Petitioner has worked with the Macon County Sheriff's Department since 2020 and appears to be a model employee. Brent Holbrooks, the elected Sheriff of Macon County, and Captain Clayton Bryson, Petitioner's supervisor, appeared at the hearing and testified to her good character and work performance. Sheriff Holbrooks and Captain Bryson testified that Petitioner is an outstanding employee and that they have no concerns about her being honest. They also testified that Petitioner was very forthright about these issues in the background check process.

10. Petitioner, without objection, also submitted letters of support from Sergeant Jonathan A. Taylor (P. Ex. 1) and Captain J. Phillips (P. Ex. 2). Sergeant Taylor and Captain Phillips echoed the sentiment expressed by Sheriff Holbrooks and Captain Bryson.

11. While employed with the Macon County Sheriff's Department, Petitioner has had no disciplinary actions.

CONCLUSIONS OF LAW

1. The parties are properly before this Administrative Law Judge. Jurisdiction and venue are properly before this Administrative Law Judge. To the extent that the Findings of Facts contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.

2. The North Carolina Sheriffs' Education and Training Standards Commission has certain authority under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B to certify justice officers and to suspend, revoke, or deny certification under appropriate proof of a rule violation.

3. The Commission's Notification of Probable Cause states that probable cause exists to deny Petitioner's justice officer certification because Petitioner knowingly made a material misrepresentation when she failed to disclose her marijuana usage on her 2015 personal history statement in violation of 12 NCAC 10B .0204(c)(1) and (c)(2).

4. N.C. Gen. Stat. §150B-40(e) provides that "[w]hen a majority of an agency is unable or elects not to hear a contested case," the agency is to apply to the Office of Administrative Hearings ("OAH") for a designation of an Administrative Law Judge ("ALJ"). In such case, "[t]he provisions of [Article 3A], rather than the provisions of Article 3, shall govern a contested case..." N.C. Gen. Stat. §150B-40(e).

5. In Article 3A cases, OAH, through an ALJ, presides over the hearing in place of the agency, and makes a “proposal for decision” back to the agency. N.C. Gen. Stat. §150B-40.

6. In *Peace v. Employment Sec. Comm’n of N. Carolina*, 349 N.C. 315, 328, 507 S.E.2d 272, 281 (1998), the North Carolina State Supreme Court addressed the burden of proof. Although Peace is an Article 3 case, the discussion of burden of proof is instructive in this instant case. Peace states:

In the absence of state constitutional or statutory direction, the appropriate burden of proof must be “judicially allocated on considerations of policy, fairness and common sense.” 1 Kenneth S. Broun, *Brandis & Broun on North Carolina Evidence* §37 (4th. Ed. 1993). Two general rules guide the allocation of the burden of proof outside the criminal contest: (1) the burden rests on the party who asserts the affirmative, in substance rather than form; and (2) the burden rests on the party with peculiar knowledge of the facts and circumstances.

Id.

7. Neither the North Carolina Constitution nor the General Assembly has addressed the burden of proof in Article 3A cases. Applying the statutory law along with “considerations of policy, fairness and common sense,” the Undersigned determines that Respondent should bear the burden of proof in an action where Respondent proposes to take some action against a justice officer based upon its investigation into that individual.

8. The burden of proof is the preponderance of the evidence standard. See N.C. Gen. Stat. §§ 150B-23(a); 29(a); and 34(a). Accordingly, the Commission must prove that it is more likely than not that Petitioner made a material misrepresentation when she failed to report her marijuana usage on her 2015 personal history statement as part of her 2015 application for justice officer certification.

9. The preponderance of the evidence is that Petitioner knowingly failed to disclose marijuana usage on her 2015 Personal History Statement and in so doing she made a material misrepresentation in violation of 12 NCAC 10B .0204(c)(1) and (c)(2).

10. 12 NCAC 10B .0205(2)(b) states that:

When the Commission suspends, revokes, or denies the certification of a justice officer, the period of sanction shall be: (2) not less than five years when the cause of action is:

(b) material misrepresentation of any information required for certification or accreditation from the Commission or the North Carolina Justice Education and Training Standards Commission;

12 NCAC 10B .0205 further provides that:

The Commission may either reduce or suspend the periods of sanction under this Item or substitute a period of probation in lieu of revocation, suspension or denial following an administrative hearing. This authority to reduce or suspend the period of sanction may be utilized by the Commission when extenuating circumstances brought out at the administrative hearing warrant such a reduction or suspension.

11. Extenuating circumstances exist in this case justifying a reduced sanction in that:
 - a. Petitioner has no other history of disciplinary problems in law enforcement.
 - b. Petitioner appears genuinely remorseful and understands the gravity of her mistakes.
 - c. The support of her Sheriff's office as to her good character, truthfulness, and value as a deputy.
 - d. The time elapsed between the violation and this hearing.

PROPOSAL FOR DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby proposed that Petitioner's justice officer certification be DENIED, but that due to the extenuating circumstances brought out at the administrative hearing, this denial be STAYED indefinitely, no sanction be imposed, and Petitioner be certified as a justice officer.

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this Proposal for Decision, to submit proposed Findings of Fact and to present oral and written arguments to the agency. N.C.G.S. § 150B-40(e).

The agency that will make the final decision in this contested case is the North Carolina Sheriffs' Education and Training Standards Commission.

A copy of the final agency decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency and a copy shall be furnished to any attorney of record. N.C.G.S. § 150B-42(a).

IT IS SO ORDERED.

This the 23rd day of January, 2023.



David F Sutton
Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service:

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This the 23rd day of January, 2023.

Melissa Boyd

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