

STATE OF NORTH CAROLINA
COUNTY OF PITT

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
22 DOJ 04113

<p>Brittany Lashay Thomas Petitioner,</p> <p>v.</p> <p>North Carolina Criminal Justice Education and Training Standards Commission Respondent.</p>	<p>PROPOSAL FOR DECISION</p>
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PROCEDURAL BACKGROUND

This case came on for hearing on February 15, 2023, before Administrative Law Judge Melissa Owens Lassiter in Greenville, North Carolina, upon Respondent's request, pursuant to N.C.G.S. § 150B-40(e), for designation of an Administrative Law Judge to preside at the hearing of a contested case under Article 3A, Chapter 150B and Chapter 17C of the North Carolina General Statutes.

By letter dated August 30, 2022, Respondent's Probable Cause Committee notified Petitioner that the Committee found probable cause existed to deny her applications for certification as a juvenile justice officer and a correctional officer. Specifically, the Committee found probable cause existed to deny Petitioner's juvenile justice certification for not less than five years pursuant to 12 NCAC 09A .0204(b)(6) for knowingly making a material misrepresentation of information required for certification. The Committee also found probable cause existed to deny Petitioner's correctional officer certification for not less than three years pursuant to 12 NCAC 09G .0504(d)(7) for knowingly making a material misrepresentation of information required for certification. (Resp Ex 12)

APPEARANCES

Petitioner:	Brittany Lashay Thomas 2748 W. Arlington Blvd., Apt. 107 Greenville, North Carolina 27834
Respondent:	Kristen Mallett Attorney for Respondent Department of Justice Special Prosecutions/Law Enforcement Section 9001 Mail Service Center Raleigh, North Carolina 27699-9001

ISSUES

1. Whether Petitioner's juvenile justice officer certification should be denied pursuant to 12 NCAC 09A .0204(b)(6) for not less than five years due to Petitioner knowingly making a material misrepresentation of information required for certification.

2. Whether Petitioner's corrections officer certification should be denied pursuant to 12 NCAC 09G .0504(d)(7) for not less than three years due to Petitioner knowingly making a material misrepresentation of information required for certification.

APPLICABLE STATUTES AND RULES

12 NCAC 09A .0204(b)(6)
12 NCAC 09A .0205(b)(4)
12 NCAC 09G .0102(4)
12 NCAC 09G .0504(d)(7)
12 NCAC 09G .0504(e)
12 NCAC 09G .0505(b)(5)
12 NCAC 10B .0204(c)(5)

EXHIBITS ADMITTED INTO EVIDENCE

Petitioner: None

Respondent: 1 - 16

FINDINGS OF FACT

UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits admitted into evidence, and the entire record in this proceeding, having weighed all evidence and assessed the credibility of the witnesses by considering 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, the Undersigned finds as follows:

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, both parties received notice of hearing, and the Petitioner received by certified mail, the proposed denial letter, mailed by Respondent, the North Carolina Criminal Justice Education and Training Standards Commission (hereinafter "The Commission"), on August 30, 2022.

2. Respondent, North Carolina Criminal Justice Education and Training Standards Commission, is authorized by Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 09G, to certify

corrections officers and to revoke, suspend, or deny such certification under appropriate circumstances with valid proof of a rule violation.

3. Petitioner was an applicant for juvenile justice officer certification with the Division of Adult Correction and Juvenile Justice. (Testimony of Angelica Maviki and R's Ex. 10, 11).

4. Petitioner had previously applied for corrections officer certification with the Division of Adult Correction. (Testimony of Angelica Maviki and R's Ex. 10, 11)

5. On August 10, 2022, the Commission's Probable Cause Committee reviewed Petitioner's case and found probable cause to deny Petitioner's certification for juvenile justice officer for not less than five years and certification for corrections officer for not less than three years for knowingly making material misrepresentations of information required for certification.

6. When seeking certification at various agencies, Petitioner had eight discrepancies on Commission forms that were deemed material misrepresentations. (Testimony of Angelica Maviki and R's Ex. 12)

7. The first material misrepresentation was made on form F-5A (JJ) which Petitioner signed on March 21, 2022, when Petitioner was applying for certification with the Division of Juvenile Justice. On this form, Petitioner failed to disclose her former last name, "Thomas-Bradley," but instead left the section blank. (Testimony of Angelica Maviki and Petitioner and R's Ex. 8)

8. The second material misrepresentation was made on form F-5A (Adult Correction) which Petitioner signed on September 6, 2016, when Petitioner was applying for certification with the Division of Adult Correction. On this form, Petitioner failed to disclose her former last name, "Thomas-Bradley," but instead left the section blank. (Testimony of Angelica Maviki and Petitioner and R's Ex. 1)

9. The third material misrepresentation was made on form F-5A (AC) which Petitioner signed on September 6, 2016, when Petitioner was applying for certification Department of Adult Correction. On this form, Petitioner marked the box "No" in response to question 3(a), which asked if she had ever used any illegal drugs, including, but not limited to, marijuana. By marking the box "No," Petitioner failed to disclose her experimentation with marijuana in 2016 as she had disclosed on her 2020 and 2022 Personal History Statement forms with the Division of Juvenile Justice and her 2021 form F-5A (AC) with the Division of Adult Correction. (Testimony of Angelica Maviki and R's Ex. 1, 3, 5, 9)

10. The fourth material misrepresentation was made on form F-5A (Adult Correction) which Petitioner signed on September 6, 2016, when Petitioner was applying for certification with the Department of Adult Correction. On this form, Petitioner marked the box "No" in response to question 3(c) which asked if she had ever purchased, possessed, manufactured, grown, or delivered any amount of illegal drugs. By marking

the box “No,” Petitioner failed to disclose marijuana possession in 2016 as she had disclosed on her 2020 and 2022 Personal History Statement forms with the Division of Juvenile Justice and her 2021 form F-5A (AC) with the Division of Adult Correction. (Testimony of Angelica Maviki and R’s Ex. 1, 3, 5, 9)

11. The fifth material misrepresentation was made on form F-5A (Adult Corrections) which Petitioner signed on September 6, 2016, when Petitioner was applying for certification with the Department of Adult Correction. On this form, Petitioner marked the box “No” in response to question 9 which asked if she had ever been court-martialed, tried on charges or the subject of a summary court, deck court, or non-judicial punishment, or any other disciplinary action. By marking the box “No,” Petitioner failed to disclose the Article 15 she had received while serving in the Army, as she disclosed on her 2021 and 2022 Personal History Statement forms and 2021 and 2022 Mandated Background Investigation forms with the Department of Juvenile Justice. (Testimony of Angelica Maviki and R’s Ex. 1, 6, 7, 9, 14)

12. The sixth material misrepresentation was made on form F-5A (Adult Corrections) which Petitioner signed on March 9, 2021, when Petitioner was applying for certification with the Department of Adult Correction. Petitioner marked the box “No” in response to question 9, which asked if she had ever been court-martialed, tried on charges or the subject of a summary court, deck court, or non-judicial punishment, or any other disciplinary action. By marking the box “No,” Petitioner failed to disclose the Article 15 she had received while serving in the Army, as she disclosed on her 2021 and 2022 Personal History Statement forms and 2021 and 2022 Mandated Background Investigation forms with the Department of Juvenile Justice. (Testimony of Angelica Maviki and R’s Ex. 5, 6, 7, 9, 14)

13. The seventh material misrepresentation was made on form F-5A (Adult Corrections) which Petitioner signed on September 6, 2016, when Petitioner was applying for certification with the Department of Adult Correction. Petitioner marked the boxes “Yes” and “No” in response to question 1, which asked if she had ever held a position in any capacity with a law enforcement agency, corrections agency, etc. which required certification. By marking both the “Yes” and “No” boxes, Petitioner failed to disclose her employment as a correctional officer in Texas as she had indicated on her 2020 Personal History Statement with the Department of Juvenile Justice. (Testimony of Angelica Maviki and R’s Ex. 1, 3)

14. The eighth material misrepresentation was made on form F-5A (Adult Corrections) which was signed by Petitioner on March 9, 2021, which Petitioner was applying for certification with the Department of Adult Correction. In response to the “Question # and Explanation” section of question 1 which asked if she had ever held a position in any capacity with a law enforcement agency, corrections agency, etc. which required certification, Petitioner only listed her employment in North Carolina in 2016 and 2020 and failed to disclose her employment as a correctional officer at the Bell County Juvenile Center in Texas in 2016 as she indicated on her 2020 Personal History Statement with the Department of Juvenile Justice. (Testimony of Angelica Maviki and R’s Ex. 3, 5)

15. At the administrative hearing, Petitioner acknowledged that she left the Army in 2016 and had two small children, ages two and three. She was making \$1,800.00 a month and received no government assistance. When she applied for certification with the Division of Adult Corrections, she did not understand how important the F3 form was and omitted that she had smoked marijuana and received an Article 15 in the military. She thought she would not get the job if she included that information. In addition, no one explained to her how to complete the forms. (Testimony of Petitioner)

16. After Petitioner began the BLET program in 2019, her instructor advised the BLET participants of the importance of completely documenting all prior employment and information on the F3 form. (Testimony of Petitioner)

17. Petitioner recognized that omitting her former last name of “Thomas-Bradley” was an honest mistake. She explained that she filled out so many forms that she was rushing through and did not look over her application. (Testimony of Petitioner)

18. During the Probable Cause Committee hearing, Petitioner apologized and stated that she did not think she would get the job if she was upfront about her previous drug use or Article 15. (Testimony of Angelica Maviki and Petitioner and R’s Ex. 12)

19. Petitioner has been employed with the Lenoir County Sheriff’s Office since September 9, 2022, and is currently certified as a justice officer by the North Carolina Sheriffs’ Education and Training Standards Commission (hereinafter “the Sheriffs’ Commission”). (Testimony of Angelica Maviki and Petitioner)

20. Major Chris Owens of the Lenoir County Sheriff’s Office is a major over patrol investigations and has been in law enforcement for over thirty years. Major Owens is not Petitioner’s direct supervisor but is over her supervisor’s supervisor.

21. Petitioner has exceeded Major Owens’ expectations in her training. The Lenoir County Sheriff’s Office shortened the length of Petitioner’s required training because Petitioner had exceeded expectations in all required levels and in all required tasks. Petitioner is very good with people, understanding, and knows the job. The Sheriff of Lenoir County rode with Petitioner during one of her shifts to observe her actions and performance. Based on her training officer’s and supervisor’s comments, and after riding with Petitioner, the Lenoir County Sheriff thought Petitioner was ready to work on patrol alone as a Deputy Sheriff.

CONCLUSIONS OF LAW

1. The parties are properly before the undersigned Administrative Law Judge in that the Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case and both parties received proper notice of the matter.

2. 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. *Charlotte v. Heath*, 226 N.C. 750, 755, 40 S.E.2d 600, 604 (1946); *Peters v. Pennington*, 210 N.C. App. 1, 15, 707 S.E.2d 724, 735 (2011).

3. Respondent, the North Carolina Criminal Justice Education Training and Standards Commission is authorized under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 9, to certify law enforcement officer and to deny, revoke, or suspend such certification.

Burden of Proof

4. From its inception, the North Carolina Administrative Procedures Act (“APA”), N.C. Gen. Stat. Chapter § 150B, has contained two separate and distinct sets of administrative hearings provisions. Each article contains separate provisions governing all aspects of the administrative hearings to which they apply. *Homoly v. N. Carolina State Bd. of Dental Examiners*, 121 N.C. App. 695, 697, 468 S.E.2d 481, 483 (1996). The manner in which a contested case is commenced and conducted varies depending on which set of provisions applies.

5. Although many similarities exist between Article 3 and Article 3A, they are decidedly different. The main distinction between the two Articles is that the burden of proof is allocated in Article 3 but is not allocated in Article 3A.

6. Historically, in Article 3A hearings, a license or certification is considered “property or rights” such that entitle the applicant or holder to a contested case hearing pursuant to Article 3A. When a license or certification is at issue, whoever is trying to deny, suspend or revoke such license or certificate away, generally has the burden of proof.

7. In *Peace v. Employment Sec. Comm’n of N. Carolina*, 349 N.C. 315, 328, 507 S.E.2d 272, 281 (1998), the N.C. Supreme Court provided:

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 context: (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.*

Although *Peace* was an Article 3 case, the discussion of burden of proof is instructive in this instant case because similar to the burden of proof issue in *Peace*, neither the North Carolina Constitution nor the General Assembly has addressed the burden of proof in Article 3A cases.

8. As Respondent requested designation of an Administrative Law Judge to hear this case pursuant N.C.G.S. § 150B-40(e), the undersigned sits and presides over

this Article 3A hearing in the place of the Respondent agency and makes a “proposal for decision” to the agency. N.C.G.S. § 150B-40. In such a case, “[t]he provisions of [Article 3A], rather than the provisions of Article 3, shall govern a contested case . . .” N.C.G.S. § 150B-40(e). See *Homoly v. N. Carolina State Bd. of Dental Examiners*, 121 N.C. App. 695, 697, 468 S.E.2d 481, 483 (1996).

9. N.C.G.S. § 150B-40 also provides that Article 3A “hearings shall be conducted in a fair and impartial manner,” and that the presiding officer, including the Administrative Law Judge, may “regulate the course of the hearings.” That statutory provision allows the presiding officer to dictate who has the burden of proof.

10. Applying the statutory law along with “considerations of policy, fairness and common sense,” and the statutory authority to regulate the course of hearing, the Undersigned determines that Respondent should bear the burden of proof in an Article 3A action where Respondent proposes to take some action against a license/certificate holder or application for certification based upon its investigation into that individual.

Proposed Denial of Petitioner’s Certification Applications

11. The Commission may suspend, revoke, or deny the certification of a criminal justice officer when the Commission finds that the applicant for certification has knowingly made a material misrepresentation of any information required for certification. 12 NCAC 09A .0204(b)(6).

12. When the Commission suspends or denies the certification of a criminal justice officer for knowingly making a material misrepresentation of any information required for certification, the period of sanction shall be not less than five years; however, the Commission may reduce or suspend the period of sanction or substitute a period of probation in lieu of suspension of certification, or impose a combination of reduction, suspension, or probation as determined on a case-by-case basis. 12 NCAC 09A .0205 (b)(4).

13. A “corrections officer” means “either or both of the two classes of officer employed by the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice: correctional officer or probation/parole officer.” 12 NCAC 09G .0102(4).

14. The Commission may suspend, revoke, or deny the certification of a corrections officer when the Commission finds that the applicant for certification has knowingly made a material misrepresentation of any information required for certification. 12 NCAC 09G .0504(d)(7).

15. When the Commission suspends or denies the certification of a corrections officer for knowingly making a material misrepresentation of any information required for certification, the period of sanction shall be not less than three years; however, the Commission may reduce or suspend the period of sanction or substitute a period of

probation in lieu of suspension of certification, or impose a combination of reduction, suspension, or probation. 12 NCAC 09A .0505 (b)(5)

16. The evidence presented at the administrative hearing sufficiently showed that Petitioner knowingly made a material misrepresentation on Commission forms when she failed to disclose her previous marijuana usage and the Article 15 she received while in the US Army.

17. Considering the absence of testimony showing otherwise, the evidence presented at the administrative hearing failed to prove that Petitioner knowingly made a material misrepresentation when she omitted her previous last name, "Thomas-Bradley," on Commission forms.

18. Considering the absence of testimony showing otherwise, the evidence presented at the administrative hearing failed to prove that Petitioner knowingly made a material misrepresentation when she omitted her previous employment at Bell County Juvenile Center in Texas.

19. While the substantial evidence presented at the administrative hearing failed to prove that Petitioner committed eight violations of the Commission's Administrative Code, the Commission's findings of probable cause were neither arbitrary nor capricious.

20. Similarly, given the "may" or permissive language used in 12 NCAC 09A .0205(b)(4) and 12 NCAC 09G .0504(d)(7), the Commission has the discretionary authority, bases on the evidence in each case, to reduce or suspend the period of sanction or substitute a probationary period, in lieu of suspension, or impose a combination of reduction, suspension or probation, when the Commission finds an applicant for certification as a criminal justice officer and/or a corrections officer, knowingly made a material misrepresentation of any information required for certification.

21. As the Undersigned the presiding officer pursuant to N.C.G.S. § 150B-40(e), sitting in place of the Commission, the Undersigned hereby exercises the discretionary authority bestowed on the Commission by the legislature in N.C.G.S. § 17C and proposes the Commission Reverse its proposed denial of Petitioner's juvenile justice officer certification and correctional officer certification, and in lieu thereof, issue probationary certifications to Petitioner for one year on the conditions that Petitioner not violate any federal law, any law of the State of North Carolina and any rules of the Commission.

PROPOSAL FOR DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Undersigned hereby proposes the Commission **REVERSE** the proposed denial of Petitioner's certifications for juvenile justice officer and correctional officer, and in lieu thereof, issue Petitioner a probationary certification as a juvenile justice officer and as a correctional officer for **ONE YEAR** on the conditions that Petitioner not violate any federal law, any law of the State of North Carolina, and any rules of the Respondent Commission.

NOTICE

The North Carolina Criminal Justice Education and Training Standards Commission will make the Final Decision in this contested case and 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 North Carolina Criminal Justice Education and Training Standards Commission shall serve a copy of the Final Decision on each party personally, or by certified mail addressed to the party at the latest address, given by the party to the agency, and shall furnish to any attorney of record. N.C.G.S. § 150B-42(a).

SO ORDERED, this the 19th day of April, 2023.



Melissa Owens Lassiter
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 19th day of April, 2023.



Lisa J Garner
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