FILED
OFFICE OF ADMINISTRATIVE HEARINGS
01/13/2023 2:53 PM

STATE OF NORTH CAROLINA

COUNTY OF PITT

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
22 OSP 01510

William Paul Reynolds, Petitioner, v. North Carolina Department of Public Safety, Respondent.	**FINAL DECISION**

This matter came before Administrative Law Judge Michael C. Byrne (the "Tribunal") for hearing at the Ayden Town Hall, on September 20-21, 2022, in Ayden, North Carolina.

APPEARANCES

For Petitioner: Tracy H. Stroud
Colombo, Kitchin, Dunn, Ball, & Porter, LLP
1698 E. Arlington Blvd.
Greenville, NC 27858

For Respondent: Jaren E. Kelly
Assistant Attorney General
N.C. Department of Justice
PO Box 629
Raleigh, NC 27602

ISSUE

Whether Respondent took adverse employment action against Petitioner in violation of N.C.G.S. 126, Article 14 (the "Whistleblower Act").

WITNESSES

For Petitioner: William P. Reynolds
Kimberly Gettys
Jacqueline Murphy
Randall Parker

Mark Fleming
Kimberly Williams
Karey Treadway
Boyce Fortner
Tracy Lee
John Herring

For Respondent: None

EXHIBITS ADMITTED

For Petitioner: Exhibits 1-11, 13-14, 16, 18-22

For Respondent: None

FINDINGS OF FACT

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 Tribunal makes the following Findings of Fact. In making these findings of fact, the Tribunal has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to the demeanor of the witnesses, 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.

Parties and Witnesses

1. Petitioner William Reynolds ("Petitioner") is an employee of the State of North Carolina. Petitioner works for Respondent North Carolina Department of Public Safety ("Respondent"). Petitioner was a credible witness except as otherwise indicated below.

2. Kimberly Gettys ("Gettys") works for Respondent as Judicial District Manager in District 27 of Division of Community Corrections. Gettys was a credible witness except as otherwise indicated below.

3. Jacqueline Murphy ("Murphy") works for Respondent as an Assistant Judicial District Manager in Division of Community Corrections. Murphy was a credible witness except as otherwise indicated below.

4. Randall Parker ("Parker") works for Respondent as a Judicial District Manager in Division of Community Corrections in Division 1. Parker was a credible witness except as otherwise indicated below.

5. Karey Treadway ("Treadway") works for Respondent as an Assistant Division Administrator for Division 4 in Division of Community Corrections. Specific portions of Treadway's testimony in this case are found to be not credible.

6. Kimberly Williams ("Williams") works for Respondent as an Assistant Judicial District Manager in Division of Community Corrections. Williams was a credible witness except as otherwise indicated below.

7. Mark Fleming ("Fleming") works for Respondent as Warden of Pamlico Correctional Institute in Division of Prisons. Fleming was a credible witness except as otherwise indicated below.

8. John Herring ("Herring) works for Respondent as Warden of Maury Correctional Institute in Division of Prisons. Herring was a credible witness except as otherwise indicated below.

9. Boyce Fortner ("Fortner") works for Respondent as Division Administrator in Division of Community Corrections for Division 4. Fortner was a credible witness except as otherwise indicated below.

10. Tracy K. Lee ("Lee") works for Respondent as Director of Community Corrections. Lee was a credible witness except as otherwise indicated below.

Petitioner's Employment History and Work Performance

11. Petitioner has worked for Respondent since June 2006, both with the Division of Prisons ("DPS") and the Department of Community Corrections ("DCC") in a permanent full-time position subject to the North Carolina Human Resources Act. Petitioner is a career-status State employee. See N.C.G.S. 126-1.1; N.C.G.S. 126-5.

12. Petitioner is a Correctional Sergeant III at the Maury Correctional Institution; he was promoted to this rank in June 2020. He has received favorable promotional references. T. 24, 26.

13. Petitioner's performance evaluations for the relevant time periods of this case (2015-2016, 2016-2017, 2017-2018, 2018-2019) were "Meets Expectations." Pet. Ex. 9. In general terms, "'Meets expectations' job performance is: An employee performing at this level is dependable and makes valuable contributions to the organization. His/her judgments are sound, and he/she demonstrates knowledge and mastery of duties and responsibilities." Locklear v. Dep't of Public Safety, 21 OSP 01175 (N.C. OAH, May 5, 2022).

Employment Action at Issue

14. On April 21, 2022, Petitioner filed a Petition for a Contested Case ("Petition") with the Office of Administrative Hearings ("OAH") alleging Respondent retaliated against him for his reporting that a Probation Parole Officer, Jonathan Byers ("Byers"), took money from offenders he supervised.

15. Petitioner's annual salary at the time of the filing of the Petition was $48,000. T. 112.

16. Each time a NCDPS employee transfers, he or she must have a favorable background check. Pet. Ex. 17.

17. In December 2021, Petitioner applied to DCC for a position as a Probation Parole Officer in Division 1. T. 25, 92.

18. On February 28, 2022, Respondent sent him a welcome letter signed by Williams, Division 1 Administrator, congratulating him for accepting the job offer. Pet. Ex. 1; T. 98. The letter did not contain any language employing that the job was in any sense "conditional" or subject to further background or reference checks.

19. On March 4, 2022, Respondent sent Petitioner a letter withdrawing the job because of an "unfavorable background check."

Background Leading to Petitioner's Protected Activity

20. On or about March 12, 2014, an offender on probation reported that Byers asked the offender to bring cash to Byers directly. Supervision fees are to be paid to the clerk of superior court. The relevant statute is:

> (c1) Supervision Fee. Any person placed on supervised probation pursuant to subsection (a) of this section shall pay a supervision fee of forty dollars ($40.00) per month, unless exempted by the court. The court may exempt a person from paying the fee only for good cause and upon motion of the person placed on supervised probation. No person shall be required to pay more than one supervision fee per month. The court may require that the fee be paid in advance or in a lump sum or sums, and a probation officer may require payment by such methods if he is authorized by subsection (g) to determine the payment schedule. **Supervision fees must be paid to the clerk of court for the county in which the judgment was entered or the deferred prosecution agreement was filed**. Fees collected under this subsection shall be transmitted to the State for deposit into the State's General Fund.
>
> N.C.G.S. 15A-1343(c1) (2022) (emphasis added).

21. The Tribunal thus finds as a fact, to the extent necessary, that a Probation and Parole Officer personally accepting case payments from an offender is a violation of a State law, rule, or regulation. N.C.G.S. 126-84(a)(1).

22. Respondent opened an internal investigation on Byers and audited his case files. Pet. Ex. 2.

23. In the investigation, some of the offenders interviewed stated that Byers told them if they would pay him, he would remit payment to the clerk of court's office. These statements are hearsay

or double hearsay and not accepted for the truth of the matter asserted. See N.C.G.S. 8C-1, Rule 801.

24. Respondent completed the internal investigation in May 2014 and concluded Respondent could not prove offenders had paid supervision fees to Byers. Pet. Ex. 2, T. 389.

Petitioner's Protected Activity

25. In June 2014, Petitioner was working for DCC in Mecklenburg County as a Probation Parole Officer. T. 22.

26. In June 2014, after the Byers investigation had closed, an offender asked Petitioner whether she needed to pay her supervision fees to him because she had paid the supervision fees to Byers previously. T. 27. These offender statements are hearsay and are accepted only as evidence of Petitioner's motivation for his reports on the matter.

27. Petitioner reported the conversation to Chief Probation Officer Deane Ewald ("Ewald"), his direct supervisor. Ewald did not ask Petitioner for a statement. There is no evidence that Ewald spoke to the offender. T. 27, 40, 120. Ewald did not testify at the contested case hearing.

28. In early July 2014, a second offender told Petitioner that he had paid his supervision fees to Byers. Petitioner again reported that information to Ewald. Once again, Ewald did not ask Petitioner to write a statement. T. 31. These offender statements are hearsay and are accepted only as evidence of Petitioner's motivation for his reports on the matter.

29. Petitioner asked Ewald to speak with the offenders, but she did not do so. T. 120, 122.

30. Neither offender was interviewed in the initial investigation that closed in May 2014. Pet. Ex. 2; T. 130.

31. Lee, the Judicial District Manager in Mecklenburg County, did not have Petitioner write a statement, reopen the Byers investigation, or open a new investigation on Byers. T. 422, 447.

32. Lee did not know about the offenders trying to pay money to Petitioner and is not sure that information ever reached his desk. T. 431. Lee believed that Ewald should have given Petitioner guidance about how to handle the offenders and what to tell them. T. 432.

33. When no one got back to Petitioner regarding his reports of Byers collecting money from offenders, Petitioner discussed the matter with Herring. T. 31. Herring, a prison warden, was not in Petitioner's chain of command.

34. Petitioner would not have spoken to Herring about the Byers matter if Ewald had acted on his reports. T. 167.

35. Herring brought up the issue to Brian Gates, Division 3 Administrator for DCC, when they were in a leadership course together. T. 309.

Employment Action Regarding Petitioner Prior to 2022

2014 "TAP Entry"

36. A "TAP" entry is a rolling performance review process. Supervisors could make entries on the employee's file, which were then logged.

37. Lee called Petitioner to his office on July 30, 2014 and issued him a TAP entry of 3/Good (TAP Report) for Petitioner's discussing DCC matters with Herring. Pet. Ex. 3; T. 39. Petitioner was upset by this action, as he felt he received a TAP entry for reporting criminal activity. T. 43. Petitioner felt intimated by the TAP entry and by Lee's demeanor at the meeting. T. 40.

38. The TAP entry stated, "Tracy Lee, JDM met with PPO Reynolds on July 30, 2014. PPO Reynolds was advised to follow his chain-of-command when issues arise or he has concerns about his caseload. PPO Reynolds was further advised not to discuss DCC matters with non-DCC personnel." Pet. Ex. 3.

39. Petitioner had never received a stand-alone TAP entry before. T. 45; Pet. Ex. 5 (Petitioner's TAP log).

40. After Lee issued the TAP entry, he emailed it to Treadway, the Assistant Division Administrator, and Fortner, the Division Administrator. Pet. Ex. 4.

41. The TAP entry ultimately did not appear in Petitioner's TAP log for 2015. Pet. Ex. 5. It is therefore unclear what, if any, legitimate performance improvement goal was served by creating this "TAP entry."

2016 Written Warning for Unacceptable Personal Conduct and Employee Action Plan

42. In 2016, Probation Parole Officer Chrystal Goldberg and Probation Parole Officer Thomas Pruitt and several law enforcement officers asked Petitioner to go to a residence with them to look for an offender, who was in the security risk group. T. 49.

43. Petitioner and local law enforcement entered an open wine cellar in the basement of the residence. T. 50.

44. Petitioner believed it was within policy to enter the wine cellar because it had no access to the house and the offender was a security risk. T. 160.

45. A resident of the home in question subsequently complained to Respondent about the law enforcement presence at her home. Respondent conducted an internal affairs investigation. T. 50-51; Pet. Ex. 7

46. On Petitioner's written statement included in the investigation report, a DCC supervisor, Bryan Branch, directed Petitioner to write that the resident had a concern about him going into the

wine cellar. Petitioner did not believe that was true. Petitioner skipped a line before he wrote that sentence to show it was not part of his original statement. T. 51; Pet. Ex. 7. Branch did not testify at the contested case hearing and his supposed statements to Petitioner are hearsay and given appropriate weight.

47. On March 28, 2016, Respondent issued Petitioner a Written Warning for Unacceptable Personal Conduct and an Employee Action Plan for entry into the residence without consent or a search warrant. Pet. Ex. 6. 1. Written Warnings cannot be appealed, and they remain active for eighteen months. T. 69.[1] Petitioner made the improvements required in the Written Warning and Action Plan.

2017 Employee Action Plan

48. On July 30, 2017, the Boiling Springs Police Department arrested an offender for possession of methamphetamines at an individual's house. The offender was on probation and had missed court dates. Petitioner was the person who contacted Boiling Springs Police about the offender's location. T. 64.

49. Petitioner had first attempted to call the Probation Parole Officer assigned to the offender's case, but that officer did not answer the phone. T. 146.

50. In Petitioner's written statement, he stated that an anonymous informant indicated the offender was an absconder and had not appeared in court. Based on the information, Petitioner went to a residence and ran tags on a vehicle there, which came back registered to the offender. The offender had active warrants and was on probation.

51. Petitioner then contacted the Boiling Springs Police Department to arrest the offender for the outstanding criminal warrants. The Boiling Springs Police Department, not Petitioner, arrested the offender. A person at the residence in question was related to a DCC Chief Probation/Parole Officer and that person complained to that officer regarding the offender's arrest. Pet. Ex. 9.

52. On September 27, 2017, based on that complaint, Respondent issued Petitioner an Employee Action Plan, which stated, "On July 30, 2017, you participated in in the arrest of [the offender]. The order for arrest that was served was not issued for probation violation or for a failure to appear related hearing." Pet. Ex. 8.

53. Employee Action Plans are not formal disciplinary action under the North Carolina Human Resources Act or North Carolina Human Resources rules.

54. Despite his Written Warning for Unacceptable Personal Conduct in 2016 and Employee Action Plan in 2017, Petitioner earned a "Meets Expectations" overall rating in his 2016-2017 Performance Evaluations. Pet. Ex. 11.

[1] But see Cole v. N. Carolina Dep't of Pub. Safety, 253 N.C. App. 270, 800 S.E.2d 708 (2017), review denied, 370 N.C. 71, 803 S.E.2d 156 (2017).

Meeting with Treadway about Targeting Concerns

55. Petitioner felt that the Written Warning and the Employee Action Plan (and other incidents) were targeted retaliation for his reports regarding the Byers matter. As a result, Petitioner met with Treadway in February 2018, and shared those concerns. T. 141. Petitioner prepared written talking points that he discussed with Treadway. Pet. Ex. 11. The meeting did not resolve Petitioner's concerns. T. 76.

56. Petitioner ultimately resigned from DCC in September 2018, taking a $7,000.00 per year pay cut. T. 76-77. Treadway was surprised when Petitioner left DCC in September 2018. T. 386.

57. From September 2018 to date, Petitioner has worked in the prison system. Petitioner had no disciplinary action in the prison system.

Petitioner's 2021 Employment Issue

58. In December 2021, more than three years after leaving DCC and approximately seven years after his reports about Byers, Petitioner applied for a position as a Probation/Parole Officer in DCC's Division 1. T. 25, 92. Petitioner was previously employed in Division 4.

59. Both Respondent's Merit-Based Hiring Policy and the North Carolina State Human Resources Manual set out procedures for when references are to be checked in the hiring process. The State Human Resources Manual provides: "**Prior to** extending an offer of employment it is required that reference check(s) be completed on the selected candidate." (emphasis supplied).

60. The Reference Checks Section instructs that the hiring manager should "call or mail a minimum of two (2) individuals listed as current or most recent prior supervisors on application." As well, if the applicant has current or prior work history the hiring manager is to "[o]btain copies of performance documents within NCVIP . . .. If the overall performance appraisal rating shows the employee has an active disciplinary action or is 'Not Meeting Expectations' approval to extend a job offer must be obtained from the hiring Agency Head or designee." Pet. Ex. 16.

61. The most qualified applicants, following a qualifications screening, are forwarded to hiring managers for interviews. All relevant policies provide that once interviews are conducted, but prior to final selection, "references shall be checked." Employment recommendations must be submitted and approved by hiring managers. Id.

62. The hiring manager in this case, Parker, had received training on the DPS Merit-Based Hiring Policy. T. 248.

63. Parker's standard practice was to have the interview board conduct three Professional Reference Checks, and the interview board in this hiring cycle conducted three Professional Reference checks on Petitioner in January 2022. T. 259-260. Williams agreed that the standard was to conduct at least three professional reference checks. T. 307. Petitioner's references were checked after his interview and came back positive.

64. Petitioner's references included Tammy Edwards, Mark Fleming, and Kim Gettys.

65. Petitioner was selected for the position. T. 250.

66. Fleming used his personal knowledge of Petitioner's work performance for his reference, as Petitioner had worked for Fleming at Maury Correctional Institute. Fleming also checked Petitioner's human resources files to make sure he did not have any active disciplinary actions. Fleming told DCC that Petitioner would be "a good candidate." T. 283; Pet. Ex. 21.

67. Edwards was the last person who had directly supervised Petitioner when he worked at DCC. Edwards had also signed off on Petitioner's 2017-2018 performance evaluations. T. 338; Pet. Ex. 11, Pet. Ex. 22. Edwards had comprehensive knowledge of Petitioner's job performance at DCC. T. 338.

68. Gettys provided a reference, completed over the telephone. Gettys rated Petitioner as Meets Expectations in all categories. Pet. Ex. 18; T. 173-174. Gettys' rating was consistent with Petitioner's performance reviews while working as a Probation Parole Officer in DCC. Petitioner's performance evaluations for 2015-2016, 2016-2017, 2017-2018, 2018-2019 were Meets Expectations. Pet. Ex. 11.

69. The Gettys reference later engendered criticism from various DCC personnel testifying in this case. Part of this criticism stemmed from unsubstantiated rumors, which the Tribunal does not find as fact or take as evidence, of a personal relationship between Gettys and Petitioner.

70. Based on Petitioner's selection in the interview process and favorable Professional Reference Checks, Parker called Petitioner and made a verbal salary offer of $58,366 in February 2022. T. 96, 248.

71. Petitioner received a welcome letter after he accepted the verbal salary offer of $58,366. The welcome letter dated February 28, 2022, was signed by Williams, the Division 1 Administrator. Petitioner was originally assigned to District 3, Pitt County, Unit J. T. 98; Pet. Ex. 1.

72. The welcome letter stated, "We are excited that you have accepted our job offer and agreed upon a start date of March 7, 2022." Nothing in the welcome letter indicated the job was "conditional" on anything.

73. In the midst of the hiring process, Respondent's hiring managers were provided a memorandum or letter written by Juliana Vukonic-Herring ("Vukonic-Herring"), another Probation Parole Officer assigned to Pitt County, regarding Petitioner. Pet. Ex. 12. Vukonic-Herring did not testify at the contested case hearing and her allegations are hearsay and inadmissible as to their truth.

74. On March 3, 2022, Parker and a DCC Assistant Judicial Manager met with Vukonic-Herring regarding her allegations. T. 252. Vukonic-Herring made various unflattering allegations

about Petitioner's workplace conduct both at DCC and in the prison system. As with the allegations in Pet. Ex. 12, these allegations are hearsay and inadmissible.

75. Parker shared Vukonic-Herring's information with his direct supervisor, Williams. Williams directed Parker to re-check Fleming's reference to "see if there was any validity to the complaints" by Vukonic-Herring. T. 258. Ultimately, neither Parker nor Williams ever substantiated the allegations made by Vukonic-Herring. T. 305-306.

76. The Tribunal thus finds as a fact that it is the reports from Vukonic-Herring, as opposed to attempted interference or retaliation from Petitioner's former supervisors at DCC, that initially prompted Williams to seek additional information regarding Petitioner. This resulted in a chain of events ending, ultimately, in Williams withdrawing the job offer.

77. On March 4, 2022, Parker called Fleming and conducted a second reference check on Petitioner. The resulting reference states in the comments, "Nothing that was documented. He's a different character. He's difficult to manage." T. 261, Pet. Ex. 20, 21. He added that Petitioner was very "by the book" in his professional dealings.

78. Fleming's conversation with Parker was brief, and Parker did not ask for elaboration. T. 285. Fleming does not recall making the statement, "Nothing that was documented." T. 290.

79. Fleming did say to Parker that Petitioner was difficult to manage, but Fleming elaborated in his testimony that he found that to be a good trait because Petitioner would speak up if someone was not following policy. T. 285.

80. Williams contacted Bryan Gates, the Division 3 Administrator for Department of Probation and Parole, about Petitioner. Gates directed Williams to Lee. T. 309.

81. Williams called Lee, who in turn directed her to Fortner and Treadway in Division 4.

82. It was from Williams' phone calls that Lee, Fortner, and Treadway, directly or indirectly, found out that Petitioner received the 2022 job offer for DCC. T. 309.

83. Lee's primary activity on Petitioner's job offer, at least in terms of any action he took on the matter, was related to Gettys providing Petitioner a reference, due to the (again unproven) past allegations of conduct involving Gettys and Petitioner. T. 367. Lee instructed Treadway to tell Gettys to "not get involved or associate herself with Mr. Reynolds." T. 444.

84. Lee's level of involvement in the Gettys reference is found to be unusual under the circumstances. Lee testified that his efforts were motivated by a desire to protect Gettys' reputation. However, the allegations involving Gettys and Petitioner – like all allegations regarding Petitioner's conduct raised in this case – were unproven and were raised approximately four years prior to the 2022 reference. T. 367. Petitioner was not applying for a position to work with Gettys or in the same district. T. 443. Neither Lee nor any witness explained how it was reasonably foreseeable that Gettys providing an employment reference to a manager in another district would re-ignite rumors of a romantic liaison between Petitioner and Gettys.

85. Fortner told Williams they would do a new reference for Petitioner and that Gettys should not have completed the reference. Fortner did not explain why Gettys allegedly should not have completed the reference and Williams did not ask about the issue. T. 310.

86. Fortner also told Williams he would not recommend Petitioner to come back to Division 4. T. 414. While Fortner has no hiring authority in Division 1 (T. 388), Fortner testified that he knew that if Petitioner had an unfavorable Professional Reference Check, he would most likely not be hired in Division 1:

> *Q. And so you knew that if Mr. Reynolds received an unfavorable reference check Ms. Williams' decision, even though it was her own decision, that she was probably not going to hire [Petitioner]; is that right?*
> *A. Most likely, yes.*

T. 419.

87. However, Williams never notified Fortner of her hiring decision regarding Petitioner. T. 418.

88. Fortner was Treadway's direct supervisor and he directed Treadway to provide the Professional Reference Check on Petitioner for Williams. T. 341 (the "Treadway/Fortner Reference"). Lee played no direct role in the creation of the Treadway/Fortner Reference. T. 447.

89. Fortner directed Treadway to complete the Treadway/Fortner Reference because the "reference check Division 1 had received was inaccurate" as Gettys had not supervised Petitioner. T. 401. This testimony was less than completely accurate; Gettys had served as Petitioner's indirect supervisor. T. 403.

90. Moreover, neither Fortner nor Treadway had never directly supervised Petitioner, either. T. 312, 403-404: "I've had less than an hour of direct contact with Mr. Reynolds." Treadway did not tell Williams that neither he nor Fortner had ever directly supervised Petitioner. T. 312.

91. Fortner could not recall another instance where a reference was created and sent to the prospective hiring manger in the manner of the Treadway/Fortner Reference, and he could not recall a Professional Reference Check that included inactive discipline and an Employee Action Plan on it. T. 426-427.

92. Treadway completed Treadway/Fortner Reference and emailed it to Williams and Lee at Fortner's direction. Pet. Ex. 14; T. 311; 344. Williams told Treadway he should not have emailed the document to Lee because Lee should not be involved in hiring decisions. T. 313.

93. On the Treadway/Fortner Reference, Treadway marked Petitioner as "Below Expectations" in Communication, Conduct, Quality of Work, and Team Player even though his Performance Reviews for 2015-2016, 2016-2017, and 2017-2018 were "Meets Expectations." Pet. Ex. 14, Pet. Ex. 11; T. 319, 326.

94. As the Tribunal indicated at hearing, these ratings do not add up. If Petitioner's work performance was truly "Below Expectations" in so many respects, he could not logically have had an overall rating of "Meets Expectations" on his Performance Review.

95. Moreover, Treadway based his ratings on the 2016 Written Warning and 2017 Employee Action Plan issued to Petitioner, not on Petitioners' Performance Reviews completed during that time. T. 383. And Treadway did not review the 2016 Written Warning before he added it to the reference. T. 349.

96. The Treadway/Fortner Reference states that Petitioner was eligible for rehire, but also contains information about the Written Warning in 2016, which was inactive, and the Employee Action Plan from 2017, which is not discipline and had previously been completed. T. 318.

97. The Tribunal finds as a fact that the Treadway/Fortner Reference was neither in good faith nor in conformance with fair and equitable selection criteria. The reasons for this finding include, without limitation:

a. Treadway's explanations regarding his justifications for the reference were neither credible nor convincing. Gettys' reference was not "inaccurate" due to Gettys not supervising Petitioner, as in fact Gettys had. Neither Treadway nor Fortner directly supervised Petitioner either, and there was no evidence of any policy preventing references from indirect supervisors: either the Gettys reference was thus legitimate, or the Treadway/Fortner Reference was not.
b. Treadway cited an inactive 2016 written warning that he did not review, yet nonetheless used this warning as a basis for rating Petitioner "Below Expectations" on a number of issues. This action, under the evidence, was at least unusual and is perhaps unique. T. 426.
c. Treadway cited an Employee Action Plan that was not disciplinary action and on which Petitioner made the required improvements. This action, under the evidence, was also at least unusual and is perhaps unique. T. 426.
d. Treadway rated Petitioner's "job performance" without looking at Petitioner's performance reviews and without, as noted, having ever directly supervised Petitioner.
e. Treadway gave an aggregate opinion of Petitioner's job performance that conflicts, on its face, with the "Meets Expectations" rating Petitioner received at the time he was actually doing his work.

98. However, there is no direct evidence that the Treadway/Fortner Reference was motivated by Petitioner's reports about Byers seven years prior. Petitioner proved that Treadway's (and Fortner's) actions on the Treadway/Fortner Reference were in bad faith and that Fortner knew the Treadway/Fortner Reference would probably cost Petitioner his job. Petitioner did not prove that those actions were motivated by Petitioner's reports on Byers.

99. It is highly unlikely that the Treadway/Fortner Reference could be motivated by anything other than personal and/or professional animus. Proving animus generally, however, is not proving the cause of that animus with respect to any specific thing. Pinning the motivation for this conduct on two reports made seven years before, without more, amounts to selecting a motive.

100. The Tribunal finds as a fact that neither Fortner nor Treadway wanted Petitioner to return to DCC and engaged in highly questionable and inappropriate actions to prevent that return from occurring, knowing (in Fortner's case) that would be the likely result of their actions. However, the evidence connecting those actions with Petitioner's Byers reports is scant to nonexistent. Moreover, as noted, Fortner had no hiring authority in DCC Division 1. T. 388.

101. Further, while it is possible that Lee did not wish Petitioner to return to DCC, the Tribunal finds Lee credible to the extent that he did not actively lobby to prevent Williams from hiring Petitioner, nor is there any evidence that Lee engaged in bad faith practices to prevent that situation from happening, other than failing to raise questions when Treadway emailed Lee a reference that, on its face, would appear questionable to any competent manager. Against that (in)action, however, Lee had been specifically asked by Williams not to involve himself in the hiring decision.

102. Lee – like Fortner and Treadway – neither made the hiring decision nor himself undertook the contested adverse employment action against Petitioner. Williams made that decision, and there is no proof that Williams, in so doing, had a retaliatory motive based on Petitioner's reports about Byers seven years prior.

103. Williams testified credibly that at no time did she discuss rescinding Petitioner's job offer with Lee. Moreover, at no time did Williams testify that at the time she rescinded Petitioner's job offer she was aware of Petitioner's 2014 reports regarding Byers' alleged acceptance of payments from offenders. There is, accordingly, no evidence that Williams, the decision-maker, was aware of Petitioner's protected activity at the time Williams took the adverse employment action against Petitioner.

104. Nor is there any evidence that any improper motive caused Williams to look again at Petitioner's references. Williams testified credibly that it was the Vukonic-Herring complaints, not attempted interference from another district, that caused her to direct a second look at Petitioner's references. T. 304. In no sense can this specific action be viewed as anything other than the actions of a prudent manager.

105. Williams testified that the reason she withdrew the job from Petitioner was because of the second reference from Fleming and the Treadway/Fortner Reference. T. 318. The Tribunal finds that testimony credible. Further, other than the inclusion of inactive disciplinary action and EAP information, Williams had no information that the Treadway-Fortner Reference on its face was in bad faith – most particularly that Treadway failed to even look at Petitioner's performance reviews in completing it.

106. Williams' reliance on Fleming's additional reference information gives credence to her decision-making. While it would have been reasonable for Williams to cast a skeptical eye on the Treadway-Fortner Reference, and to inquire further into it, she at the same time had less than positive reference information from Fleming. Thus, it is reasonable that Williams, in reviewing all information provided, concluded that in authorizing the hiring of Petitioner she was, in effect, hiring a problem. Such a conclusion is not unlawful.

107. On March 4, 2022, Parker called Petitioner and told him the "position has been rescinded" because of an unfavorable background check. T. 99, 103. Parker did not tell Petitioner what the unfavorable background check was related to.

108. Petitioner clearly believes, and so testified, that the unfair and inequitable reference described above was the direct result of his Byers reports. However, Petitioner's evidence of this motive is almost exclusively statements from Gettys, along with his own belief that this was the case.

109. Gettys testified that everything she knew about Jonathan Byers was based on what Petitioner told her and she assumed that was the reason why Petitioner did not get the job in DCC. Additionally, Gettys never learned directly or indirectly that Lee was trying to block Petitioner from returning to DCC.

CONCLUSIONS OF LAW

1. All parties are properly before the Tribunal and jurisdiction and venue are proper. Despite the due diligence of all parties, the time for completing this matter exceeded the usual, regular, and customary time of completion. For that reason, extraordinary cause existed for the issuance of this Final Decision more than 180 days from the commencement of the case. N.C.G.S. 126-34.02

2. To the extent that the Findings of Fact 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, 440 S.E.2d 600, 604 (1946).

3. A court, or in this case an administrative Tribunal, need not make findings as to every fact that arises from the evidence and need only find those facts which are material to the settlement of the dispute. Flanders v. Gabriel, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612, aff'd, 335 N.C. 234, 436 S.E.2d 588 (1993).

The Nature of Petitioner's Employment Offer Is Immaterial

4. The parties dispute the nature of Respondent's offer of employment to Petitioner. Respondent contends the offer was "conditional" on a background check. Petitioner responds, accurately, that Respondent's letter to Petitioner informing him of his selection was not conditional in its language and said nothing about any further requirements.

5. It is not necessary for the Tribunal to resolve this dispute. Whether an employment offer is conditional is generally a matter of contract law. Mabry v. Fuller-Shuwayer Co., 50 N.C. App. 245, 247, 273 S.E.2d 509, 510 (1981), review denied, 302 N.C. 398, 279 S.E.2d 352, 352 (1981). This action, by contrast, is brought under Article 14 of Chapter 126, the "Whistleblower Act." OAH has jurisdiction over this claim as Petitioner is a career-status State employee subject to Article 8 of Chapter 126. See N.C.G.S. 126-34.02; N.C.G.S. 126-86-87.

6. The Whistleblower Act makes it unlawful for the head of any State department, agency or institution or other State employee exercising supervisory authority to **discharge, threaten or**

otherwise discriminate against a State employee regarding the State employee's **compensation, terms, conditions, location, or privileges of employment** because the State employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, any activity described in N.C.G.S. 126-84, unless the State employee knows or has reason to believe that the report is inaccurate. N.C.G.S. 126-85 (emphasis supplied).

7. Petitioner alleges that a State employee or employees exercising supervisory authority discriminated against him because he made reports protected by N.C.G.S. 126-84, and that, as a result, he lost a job. Such conduct, if proven, obviously affects the "compensation, terms, conditions, location, or privileges" of Petitioner's employment with the State, whether the job at issue was "conditional" or not.

8. The "conditional" or "unconditional" nature of the employment offer is thus immaterial to this contested case; if Petitioner lost a State job because he engaged in protected activity set forth in N.C.G.S. 126-84, OAH has jurisdiction to award him all relief available under N.C.G.S. 126-87.

The Whistleblower Act Framework

9. The Whistleblower Act establishes that it is North Carolina policy to encourage State employees to report violations of state or federal law, rules or regulations; fraud; misappropriation of state resources; "[s]ubstantial and specific danger to the public health and safety; or [g]ross mismanagement, a gross waste of monies, or gross abuse of authority"; and it further protects State employees from intimidation or harassment when they report on "matters of public concern." N.C.G.S. 126-84.

10. To protect State employees and others[2] making such reports, the Whistleblower Act makes it unlawful, as discussed, when the head of any State department, agency or institution or other State employee exercising supervisory authority discharges, threatens or otherwise discriminates against a State employee regarding the State employee's compensation, terms, conditions, location, or privileges of employment because the State employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, any activity described in N.C.G.S. 126-84, unless the State employee knows or has reason to believe that the report is inaccurate. N.C.G.S. 126-85.

11. State employees damaged by such conduct may bring an action for various remedies. "The Act goes beyond merely allowing suit, however, and provides various remedies for the injured employee, including injunctive relief, damages, attorney's fees, and, in some cases, treble damages." Minneman v. Martin, 114 N.C. App. 616, 619, 442 S.E.2d 564, 566 (1994) (citing N.C.G.S. 126–87 (1993)).

12. In Minneman, the Court of Appeals applied Whistleblower Act protection to a State employee whom, as in this case, alleged non-selection for a State job because of her involvement

[2] "Notwithstanding any other provision of this Chapter, Article 14 of this Chapter applies to all State employees, public school employees, and community college employees." N.C.G.S. 126-5(c5)

in activities protected under the Act.

13. In 2006, finding that prior Whistleblower Act claimants involved "protected activities concerned reports of matters affecting general public policy," the Court of Appeals imposed a requirement that the protected activity must:

> [C]oncern matters affecting general public policy. We decline to extend the definition of a protected activity to individual employment actions that do not implicate broader matters of public concern. We do not believe the General Assembly intended N.C. Gen. Stat. § 126–84 to protect a State employee's right to institute a civil action concerning employee grievance matters.

Hodge v. N. Carolina Dep't of Transp., 175 N.C. App. 110, 116-17, 622 S.E.2d 702, 706-07 (2005); review denied, 360 N.C. 533, 633 S.E.2d 816 (2006).

14. North Carolina's appellate courts have applied Whistleblower Act protection to employees engaged in protected activity in multiple situations. See Wells v. N.C. Dep't of Corr., 152 N.C. App. 307, 313, 567 S.E.2d 803, 808 (2002) (plaintiff sought protection from retaliation after reporting sexual harassment); Caudill v. Dellinger, 129 N.C. App. 649, 655, 501 S.E.2d 99, 103 (1998) (employee fired after cooperating with SBI regarding misconduct by her supervisor); Minneman, 114 N.C. App. at 617, 442 S.E.2d at 565 (plaintiff alleged retaliation due to her participation in investigation of supervisor's mistreatment of dental patients at a state hospital); Newberne v. Dep't of Crime Control & Pub. Safety, 359 N.C. 782, 797, 618 S.E.2d 201, 211 (2005) (plaintiff reported to his supervisor that fellow troopers exercised gross abuse of authority in the apprehension and arrest of a suspect); Swain v. Elfland, 145 N.C. App. 383, 385, 550 S.E.2d 530, 533 (plaintiff alleged that adverse employment actions were taken against him due to his reporting of improper police procedures and obstruction of justice).

15. The Act has also been raised in cases alleging misappropriation of governmental resources. See Hanton v. Gilbert, 126 N.C. App. 561, 564, 486 S.E.2d 432, 435 (a dispute over the policy regarding the use of equipment purchased with federal grant money); Aune v. University of North Carolina, 120 N.C. App. 430, 431, 462 S.E.2d 678, 680 (1995) (plaintiff reported possible conflicts of interest among staff members and potential misappropriation of state resources), disc. review denied, 342 N.C. 893, 467 S.E.2d 901 (1996).

16. Since 2013, OAH has authority to award all remedies available in Superior Court to employees (such as Petitioner here) who are subject to Article 8 of the North Carolina Human Resources Act and are now required to bring Whistleblower Act actions in OAH. "State employees subject to Article 8 of Chapter 126 now must pursue a whistleblower claim in the OAH. By simultaneously amending N.C. Gen. Stat. § 126-86 and enacting N.C. Gen. Stat. § 126-34.02(e), the General Assembly ensured remedies described by N.C. Gen. Stat. § 126-87 are still available to these claimants." Hunt v. N.C. Dep't of Pub. Safety, 266 N.C. App. 24, 30, 830 S.E.2d 865, 869 (2019), review denied, 373 N.C. 60, 832 S.E.2d 732 (2019).

17. In order to maintain a claim under the Whistleblower Act, a plaintiff (here, petitioner) must

prove by a preponderance of the evidence the following three elements: "(1) that the plaintiff engaged in a protected activity, (2) that the defendant took adverse action against the plaintiff in his or her employment, and (3) that there is a causal connection between the protected activity and the adverse action taken against the plaintiff." Hubbard v. N. Carolina State Univ., 248 N.C. App. 496, 498, 789 S.E.2d 915, 917-18 (2016) (citing Newberne, 359 N.C. at 788, 618 S.E.2d at 206).

18. In Newberne, the Supreme Court articulated the proof structure for a causal connection:

> [t]here are at least three distinct ways for a plaintiff to establish a causal connection between the protected activity and the adverse employment action under the Whistleblower Act. First, a plaintiff may rely on the employer's admission that it took adverse action against the plaintiff solely because of the plaintiff's protected activity . . ..
> Second, a plaintiff may seek to establish by circumstantial evidence that the adverse employment action was retaliatory and that the employer's proffered explanation for the action was pretextual. Cases in this category are commonly referred to as pretext cases....
> . . .
> Third, when the employer claims to have had a good reason for taking the adverse action but the employee has direct evidence of a retaliatory motive, a plaintiff may seek to prove that, even if a legitimate basis for discipline existed, unlawful retaliation was nonetheless a substantial causative factor for the adverse action taken.

Hodge v. N. Carolina Dep't of Transp., 246 N.C. App. 455, 471, 784 S.E.2d 594, 605 (2016), citing Newberne, 359 N.C. at 788, 618 S.E.2d at 206.

19. Simplified, a petitioner may show:

a. respondent admits the retaliatory action;
b. respondent's explanation for the retaliatory action was pretext for its retaliatory motive ("pretext cases"); or
c. there is direct evidence of a retaliatory motive being a substantial cause for the respondent's adverse employment action, making an otherwise legitimate action unlawful ("mixed-motive cases").

20. The "direct evidence" required in a mixed-motive case is "evidence of conduct or statements that both reflect directly the alleged [retaliatory] attitude and that bear directly on the contested employment decision." Hubbard, 248 N.C. App. at 500, 789 S.E.2d at 918.

21. As referenced, if Petitioner makes one of these showings, the Tribunal may impose a number of remedies:

> [I]njunction, damages, reinstatement of the employee, the payment of back

> wages, full reinstatement of fringe benefits and seniority rights, costs, reasonable attorney's fees or any combination of these. If an application for a permanent injunction is granted, the employee shall be awarded costs and reasonable attorney's fees. If in an action for damages the court finds that the employee was injured by a willful violation of G.S. 126-85,[3] the court shall award as damages three times the amount of actual damages plus costs and reasonable attorney's fees against the individual or individuals found to be in violation of G.S. 126-84.
>
> N.C.G.S. 126-87; N.C.G.S. 126-34.02(e).

Analysis

Did Petitioner Engage In Protected Activity?

22. Answer: **Yes.** In making his 2014 reports about Byers, Petitioner engaged in protective activity covered under N.C.G.S. 126-84. As found above, probation officers accepting payments from offenders in the manner alleged is contrary to a statute. Thus, Petitioner's report concerned a violation of a State or Federal law, rule, or regulation.

Did the Protected Activity Involve A Matter of Public Concern?

23. Answer: **Yes.** Neither party gave substantial attention to this requirement from Hodge. However, the Tribunal concludes that the intent of the statute at issue is to prevent probation and parole officers from profiting through their supervision of offenders – in essence, from being bribed – and that the prospect of a probation and parole officer collecting cash payments from offenders, in violation of that statute, would concern an ordinary and reasonable member of the public. Therefore, Petitioner's protected activity involved a matter of public concern.

Did Petitioner Suffer An Adverse Employment Action?

24. Answer: **Yes**. Petitioner received a job offer, accepted it, and the job offer was withdrawn. This undeniably related to Petitioner's "compensation, terms, conditions, location, or privileges of employment" with the State of North Carolina. Further, as noted, the Court of Appeals has specifically held that non-selection of a State employee for a State job is adverse employment action for purposes of Whistleblower Act. Minneman, 114 N.C. App. at 619, 442 S.E.2d at 566.

Did Petitioner Prove A Causal Connection Between His Protected Activity and the Adverse Employment Action?

25. Answering this question requires first determining what kind of proof structure exists under Newberne.

a. Did Respondent Admit A Retaliatory Motive?

[3] It is unclear how a non-willful violation of the Whistleblower Act might occur.

Answer: **No.**

b. Did Petitioner Establish Proof of Pretext By Circumstantial Evidence?

Answer: **No**.

26. A first consideration is the distance in time between the protected activity and the adverse employment action – specifically, 2014 to 2021. As Respondent argues in its proposed decision:

> *Temporal proximity alone may be sufficient to establish a causal connection, but only when the adverse employment decision follows the protected activity "very closely." Perry v. Kappos, 489 Fed. App'x 637, 643 (4th Cir. 2012) (quoting Clark Cnty. Sch. Dist. v. Breeden, 532 U.S. 268, 273 (2001)). Although there is no bright line rule, courts have found that a lag of as little as ten weeks is sufficient to "weaken significantly" the inference of causality. See King v. Rumsfeld, 328 F.3d 145, 151 n. 5 (4th Cir. 2003). If a plaintiff cannot establish causality through temporal proximity alone, the plaintiff must produce other evidence of causation*.

27. Mere distance in time between protected activity and retaliation does not extinguish a Whistleblower Act claim: some retaliatory actors, like Don Vito Corleone, may no doubt decide that "Revenge is a dish that tastes best when it is cold."[4] However, the case law shows that with distance in time comes the need for a Whistleblower Act claimant to provide separate independent proof in addition to temporal proximity.

28. Most damaging to Petitioner's case on this point is that there is no evidence Williams, the person taking the adverse employment action, had any knowledge of Petitioner's protected activity at the time she withdrew the job offer. "To show causation, a retaliation claimant must establish, **at a minimum**, that **the relevant decision makers had knowledge of the protected activity**." Azlea Hubbard v. N. C. Dep't of Commerce, Div. of Workforce Solutions, 2014 WL 3402563, 12 OSP 08613 (N.C. OAH, May 19, 2014) (citing McNairn v. Sullivan, 929 F.2d 974, 980 (4th Cir. 1991); Gibson v. Old Town Trolley Tours, 160 F.3d 177, 182 (1998)) (emphasis supplied). Moreover, Williams' second look at Petitioner's references, which started the chain of events leading to the loss of the job offer, was clearly initiated by the complaints from Vukonic-Herring. These had nothing to do with any protected activity.

29. Further, reference checks have long been part of the State employment process. Betty R. Holman v. Broughton Hospital, 2000 WL 33952952, 99 OSP 0580 (N.C. OAH, Feb. 11, 2000); Cynthia Michelle Guess-Godwin v. Winston-Salem State Univ., 2003 WL 22948467, 02 OSP 1255 (N.C. OAH, Sep. 2, 2003); Anna M. Hamburg v. North Carolina Dep't of Health & Human Servs., 2014 WL 7226543, 14 OSP 00867 (N.C. OAH, Nov. 21, 2014). As the Tribunal recently held in another contested case, denial of employment due to bad references, even when the employee in question was previously the selected candidate for the job, is not in itself an unlawful act, even when those references were not reflected in the employee's performance evaluations. Bennifer Pate v. NC Dep't of Health & Human Services Division of Health Services Radiation

[4] Mario Puzo, The Godfather, G.P. Putnam's Sons (1969).

Protection Section, 2022 WL 16709938. 21 OSP 05439 (N.C. OAH, Sept. 14, 2022).[5]

30. While Treadway and Fortner engaged in bad faith conduct by submitting the Treadway-Fortner Reference, neither of those persons was the decision-maker. Further, as noted, Williams based her decision not solely on the bad faith reference provided by Treadway, but also on the reports from Fleming – of whom no evidence of bad faith or retaliatory motive exists.

31. This is important, for establishing a pretext case requires showing that the employer's offered explanation for the adverse employment action was pretext not for a motive, or possible motive – but the motive: retaliation for protected activity. "If the employer articulates a legitimate, nondiscriminatory reason for its action, Petitioner must forecast evidence from which a reasonable finder of fact could determine that the defendant's proffered reason was pretextual and that the plaintiff's [whistleblowing] was the true motivating force behind the . . . decision or risk having his complaint dismissed." Walls v. City of Winston-Salem, 211 N.C. App. 199, 711 S.E.2d 875, 2011 WL 1467581 (2011) (unpublished).

32. While it is easy to second-guess Williams' concluding from Fleming's (generally good) reference that Petitioner should not work for the Division, that conclusion is not inherently implausible or unbelievable. As noted in the Findings of Fact, the Tribunal's overall impression is that Williams considered all the information about Petitioner – the complaints from Vukonic-Herring, the bad faith Treadway reference, Fortner's comments, and Fleming's additional information – and simply concluded that Petitioner's employment was a potential problem her Division did not need. Of those factors, only Treadway and Fortner's actions were proven illegitimate.

33. "Proven illegitimate" in this context means (a) the Treadway-Fortner Reference was in bad faith due to the reasons found above, and (b) Fortner knew that reference would likely cost his job. It was not established by Petitioner's evidence that these actions, while unfair and inappropriate, were retaliation for Petitioner's reports made seven years earlier. Petitioner's "belief to the contrary, without more, does not constitute specific, non-speculative facts, discrediting defendants' non-retaliatory motive." Hubbard, 248 N.C. App. at 505, 789 S.E.2d at 922.[6]

34. For all of these reasons, the Tribunal concludes as a matter of law that Petitioner failed to show that the adverse employment action was a pretext for retaliatory activity in violation of the Whistleblower Act.

c. Did Petitioner Show Direct Evidence of a Retaliatory Motive As a Substantial Cause For Respondent's Adverse Employment Action?

Answer: **No.**

35. This proof structure fails for some of the same reasons as the second. Most obviously, at risk of repetition, there is no evidence that the decision-maker had any knowledge of Petitioner's

[5] NB: the bad references in Pate were from persons solicited by the employee herself.
[6] Hubbard, unlike the present case, was an appeal from summary judgment. The Tribunal concluded that sufficient doubt existed in this case to deny Respondent's motion for summary judgment and take the matter to trial.

protected activity when she withdrew the job offer – which was the adverse employment action. Retaliatory motive cannot be a "substantial cause" when the decision-maker is unaware of the protected activity in the first place.

36. Here again the lack of temporal proximity also damages Plaintiff's claim. With a seven-year gap between protected activity and the alleged retaliation, there must be some evidence other than two managers without hiring authority sending a bad faith reference. While the Tribunal recognizes the difficulty of Petitioner proving this connection seven years after the fact, it remains the case that Petitioner's proof must in some meaningful way other than belief and speculation tie Fortner and Treadway's actions to his reports about Byers.

37. It may well be the case that Fortner and Treadway were motivated to retaliate against Petitioner because of the Byers reports. It is equally plausible that Fortner and Treadway simply disliked Petitioner for other reasons. Either way, it was not shown that retaliatory motive was a substantial causal factor for the adverse employment action in this case, taken by a person over whom neither Fortner no Treadway had authority.

FINAL DECISION

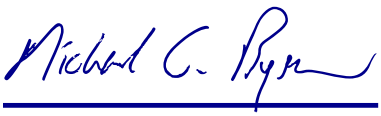
Petitioner did not establish an actionable violation of the Whistleblower Act.

NOTICE OF APPEAL

This Final Decision is issued under the authority of N.C.G.S. 150B-34. Pursuant to N.C.G.S. 126-34.02, any party wishing to appeal the Final Decision of the Administrative Law Judge may commence such appeal by filing a Notice of Appeal with the North Carolina Court of Appeals as provided in N.C.G.S. 7A-29(a). The appeal shall be taken within 30 days of receipt of the written notice of final decision. A notice of appeal shall be filed with the Office of Administrative Hearings and served on all parties to the contested case hearing.

IT IS SO ORDERED.

This the 13th day of January, 2023.



Michael C. Byrne
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.

Tracy H Stroud
Colombo, Kitchin, Dunn, Ball, & Porter, LLP
tstroud@ck-attorneys.com
Attorney For Petitioner

Tammera S Hill
Assistant Attorney General, NC Department of Justice
thill@ncdoj.gov
Attorney For Respondent

Bettina J Roberts
North Carolina Department of Justice
bjroberts@ncdoj.gov
Attorney For Respondent

Jaren E. Kelly
NCDOJ
jkelly@ncdoj.gov
Attorney For Respondent

This the 13th day of January, 2023.

Christine E. Cline
Law Clerk
N.C. Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, NC 27609-6285
Phone: 984-236-1850