

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12 DOJ 00653

JAMES PHILIP DAVENPORT,

Petitioner,

v.

N.C. CRIMINAL JUSTICE
EDUCATION AND TRAINING
STANDARDS COMMISSION,

Respondent.

PROPOSAL FOR DECISION

In accordance with North Carolina General Statute 150B-40(e), Respondent requested the designation of an administrative law judge to preside at an Article 3A, North Carolina General Statute 150B contested case hearing of this matter. Based upon the Respondent's request, Senior Administrative Law Judge Fred G Morrison Jr. heard this contested case in Raleigh, North Carolina, on August 10, 2012.

APPEARANCES

Petitioner: Robert O. Crawford, III, Attorney at Law
Crawford & Crawford, LLP
6500 Creedmoor Road, Suite 104
Raleigh, North Carolina 27613

Respondent: Lauren D. Tally, Assistant Attorney General
N.C. Department of Justice
9001 Mail Service Center
Raleigh, North Carolina 27699-9001

ISSUE

Is Respondent's proposed denial of Petitioner's law enforcement officer certification supported by a preponderance of the evidence when Petitioner made material misrepresentations of information required for certification?

RULES AT ISSUE

12 NCAC 09A.0204(b)(6)
12 NCAC 09A.0205(b)(4)

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 factors 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 Petitioner received the notification of Probable Cause to Deny Law Enforcement Officer Certification through a letter mailed by Respondent on December 2, 2011. (Respondent's Exhibit 12)

2. The North Carolina Criminal Justice Education and Training Standards Commission has the authority granted under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 9A, to certify law enforcement officers and to revoke, suspend, or deny such certification.

3. 12 NCAC 09A.0204(b)(6) provides that the Commission may suspend, revoke, or deny the certification of a criminal justice officer when the Commission finds that the applicant for certification or the certified officer has knowingly made a material misrepresentation of any information required for certification or accreditation.

4. 12 NCAC 09A.0205(b)(4) provides that when the Commission suspends or denies the certification of a criminal justice officer, the period of sanction shall be not less than five years; however, the Commission may either reduce or suspend the period of sanction under Paragraph (b) of this Rule or substitute a period of probation in lieu of suspension of certification following an administrative hearing, where the cause of sanction is material misrepresentation of any information required for certification.

5. Petitioner appeared before the Probable Cause Committee of the Criminal Justice Education and Training Standards Division on November 17, 2011. On December 2, 2011, Petitioner was notified in writing that Committee found probable cause to deny his application for law enforcement certification for not less than five years. Petitioner requested the following administrative hearing. (Respondent's Exhibit 12)

6. Richard Squires (hereinafter "Squires"), investigator for Respondent,

testified at the hearing that Petitioner was originally awarded certification from the North Carolina Criminal Justice Education and Training Standards Commission on February 13, 2008, as a full time law enforcement officer with the General Assembly Police Department. (Respondent's Exhibit 1) While employed with the General Assembly Police Department, Petitioner actively sought out other sworn law enforcement positions. Between February and April of 2009 Petitioner applied with the Smithfield Police Department, the Raleigh Police Department, the Kenly Police Department, and the Rocky Mount Police Department. Squires testified that he was first made aware of Petitioner in October of 2009. (Respondent's Exhibits 7, 8, and 9)

7. Squires testified that Respondent received a memorandum referencing Petitioner from Sergeant T.J. Keith of the Raleigh Police Department on October 1, 2009. (Respondent's Exhibit 3) Squires recalled that the memorandum referenced admissions made by the Petitioner during his March 16, 2009, recruiting interview with the Raleigh Police Department. The memo further alleged that Petitioner falsely represented his employment history when applying with other North Carolina law enforcement agencies.

8. Detective Corinne D. McCall (hereinafter "McCall") also testified at the hearing. McCall, a veteran of the Raleigh Police Department, stated that she interviewed Petitioner as a potential lateral recruit on March 16, 2009. One of McCall's responsibilities during the interview process was to aid Petitioner in the completion of all necessary application forms. When asked to recall all prior employment, Petitioner stated that he was "Chief" of mall security for a Pennsylvania mall in 2002 with the security firm IPC International. Petitioner revealed that he began this position on July 26, 2002, and that he was terminated due to a conflict with management on November 12, 2002. (Respondent's Exhibit 3)

9. McCall testified that Petitioner grew angry and defensive when she questioned him further about the 2002 security position. Petitioner stated that he "should have not even told [her] about that job", and that "[McCall] would have never found out about it" had he not said anything. Petitioner stated during the interview that he did not "remember if [he] put [the mall job] on [his] last F-3 when he applied with the General Assembly Police Department, and that the job "[did not] matter. (Respondent's Exhibit 3)

10. Petitioner filed a complaint with Chief Harry Dolan of the Raleigh Police Department on March 19, 2009. Petitioner alleged that he was treated like a "pre-rookie candidate" during his interview and that he deserved more respect as a veteran officer. Petitioner withdrew his application from the Raleigh Police Department in the same letter (Respondent's Exhibit 4)

11. Following his interview with the Raleigh Police Department, Petitioner was informed by the General Assembly Police Department that he was the subject of an internal affairs investigation. Petitioner resigned from the General Assembly Police Department while under investigation on August 3, 2009. Petitioner then joined the

Rocky Mount Police Department on September 21, 2009. The investigation of Petitioner subsequently linked him to nine material misrepresentations. Petitioner was found to have excluded the mall security position he held in 2002 from five prior personal history application statements made to various North Carolina law enforcement agencies. (Respondent's Exhibits 5-9)

12. On October 27, 2007, Petitioner submitted a Form F-3 Personal History Statement for employment with the General Assembly Police Department. (Respondent's Exhibit 5) Question 26 on Petitioner's Form F-3 stated "If you have ever been discharged or requested to resign from any position because of criminal or personal misconduct or rules violations, give details". Petitioner answered the question "No". Petitioner did not indicate that in 2002 he was fired by IPC International. Question 31 on Petitioner's Form F-3 stated "Please list your complete work history below. Your work history should be fully documented. Petitioner did not list his 2002 employment with IPC International in response to this question. Petitioner signed and notarized this Form F-3 beneath a sentence stating "I hereby certify that each and every statement made on this form is true and complete and understand that any misstatement or omission of information will subject me to disqualification or dismissal.

13. On January 14, 2008, Petitioner submitted a Form F-8 Background Investigation Form for employment with the General Assembly Police Department. (Respondent's Exhibit 6) Question 30 on Petitioner's Form F-8 asked, "Have you ever been terminated or asked to resign from any employment"? Petitioner answered the question "No". Petitioner did not indicate that in 2002 he was fired by IPC International. Petitioner signed and notarized this Form F-8 beneath a sentence stating "I hereby certify that each and every statement made on this form is true and complete and understand that any misstatement or omission of information will subject me to disqualification or dismissal".

14 On February 4, 2009, Petitioner submitted a Form F-3 Personal History Statement for employment with the Smithfield Police Department. (Respondent's Exhibit 9) Question 26 on Petitioner's Form F-3 asked "Have you have ever been discharged or requested to resign from any position because of criminal or personal misconduct or rules violations"? Petitioner answered the question "No". Petitioner did not indicate that in 2002 he was fired by IPC International. Question 31 on Petitioner's Form F-3 stated "List all jobs you have held in the last ten years". Petitioner did not list his 2002 employment with IPC International in response to this question. Petitioner signed and notarized this Form F-3 beneath a sentence stating "I hereby certify that each and every statement made on this form is true and complete and understand that any misstatement or omission of information will subject me to disqualification or dismissal".

15. On April 10, 2009, Petitioner submitted a Form F-3 Personal History Statement for employment with the Kenly Police Department. (Respondent's Exhibit 8) Question 26 on Petitioner's Form F-3 stated "If you have ever been discharged or requested to resign from any position because of criminal or personal misconduct or rules

violations, give details". Petitioner answered the question "No". Petitioner did not indicate that in 2002 he was fired by IPC International. Question 31 on Petitioner's Form F-3 stated "List all the jobs you have held in the last ten years". Petitioner did not list his 2002 employment with IPC International in response to this question. Petitioner signed and notarized this Form F-3 beneath a sentence stating "I hereby certify that each and every statement made on this form is true and complete and understand that any misstatement or omission of information will subject me to disqualification or dismissal."

16. On April 27, 2009, Petitioner submitted a Form F-3 Personal History Statement for employment with the Rocky Mount Police Department. (Respondent's Exhibit 7) Question 26 on Petitioner's Form F-3 asked "If you have you [sic] ever been discharged or requested to resign from any position because of criminal or personal misconduct or rules violations, give details". Petitioner answered the question "No". Petitioner did not indicate that in 2002 he was fired by IPC International. Question 31 on Petitioner's Form F-3 stated "List all jobs you have held in the last ten years". Petitioner did not list his 2002 employment with IPC International in response to this question. Petitioner signed and notarized this Form F-3 beneath a sentence stating "I hereby certify that each and every statement made on this form is true and complete and understand that any misstatement or omission of information will subject me to disqualification or dismissal".

17. In total, Petitioner submitted four inaccurate F-3 Personal History Statement Forms and one inaccurate F-8 Background Investigation Form. (Respondent's Exhibits 5-9) In total, Petitioner made at least nine material misrepresentations to North Carolina Law Enforcement agencies between 2007 and 2009.

18. Petitioner repeatedly presented contradictory evidence when he testified at the hearing. In his March 16, 2009, interview with the Raleigh Police Department, Petitioner claimed that he only remembered the 2002 IPC position because his wife had recently reminded him of it. At the hearing, however, Petitioner claimed that "an old friend from up North" had reminded him of the position. At the hearing, Petitioner also claimed that he did not change his F-3 and F-8 forms after learning of the inaccuracies because he had spoken about the matter directly with the Chief of each respective Department he applied to. At no point during this investigation, however, has Petitioner suggested or presented evidence that he discussed the matter with the Chiefs of the General Assembly, Smithfield, Kenly, or Rocky Mount Police Departments. Neither Squires nor Respondent received any notice from a departmental Chief that Petitioner had addressed the matter.

19. Though Petitioner repeatedly held himself out as a veteran officer, his testimony at the hearing presented a lack of knowledge of the duties expected of a North Carolina law enforcement officer. When asked whether he had any continuing duty to report to the Criminal Justice Standards Division, Petitioner responded that he did not think he did, but rather that his supervisory agency was tasked with contacting the Criminal Justice Standards Division. This statement directly contradicts the statement of

certification that Petitioner signed on each of his F-3 Personal History Forms and his F-8 Background Investigation Form which states that "I will report to the employing agency and forward to the NC Criminal Justice Education and Training Standards Commission any additional information which occurs after the signing of this document". By failing to correct his F-3 and F-8 forms after recognizing errors in them at his March 16, 2009, recruitment interview, Petitioner directly contravened a standing responsibility.

20. Petitioner admitted at the hearing that he submitted F-3 Personal History Forms and F-8 Background Investigation Forms that were not full, fair, and accurate. This admission directly negates the certification that Petitioner signed on each form pledging that the information included was true and complete.

21. Petitioner's misrepresentations are especially egregious in light of his testimony that the chief qualities of an effective law enforcement officer are his honesty and integrity. Petitioner testified that he completed a Basic Law Enforcement Training (BLET) academy in the fall of 2007 and that the importance of honesty was stressed throughout the program. When asked, Petitioner admitted that he took a specific course about how to submit complete and accurate documents during his 2007 BLET.

BASED UPON the foregoing FINDINGS OF FACT and upon the preponderance or greater weight of the evidence in the whole record, the Undersigned makes the following:

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in the matter. 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.

2. The Respondent, the North Carolina Criminal Justice Education and Training Standards Commission, has the authority granted under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 9G, to certify correctional officers and to revoke, suspend, or deny such certification.

3. Pursuant to 12 NCAC 09A .0204(b)(6), the Commission shall suspend the certification of a certified officer when the Commission finds that the officer "...has knowingly made a material misrepresentation of any information required for certification or accreditation".

4. Pursuant to 12 NCAC 09A.0205(b)(4), when the Commission suspends the certification of a certified officer pursuant to 12 NCAC 09A .0204, the period of the sanction shall be not less than five years where the cause of sanction is...the making of material misrepresentations. Respondent can substitute a period of probation

5. The party with the burden of proof in a contested case must establish the facts required by N.C.G.S. 150B-23(a) by a preponderance of the evidence. N.C. Gen. Stat. 150B-29(a). The administrative law judge shall decide the case based upon the preponderance of the evidence. N.C. Gen. Stat. 150B-34(a).

6. Respondent has the burden of proof in the case at bar. Respondent has shown by a preponderance of the evidence that Respondent's proposed suspension of Petitioner's certification is supported by substantial evidence.

7. Respondent may properly suspend the Petitioner's certification pursuant to 12 NCAC 09A .0204(b)(6) for making material misrepresentations during the certification or accreditation process. Respondent may also substitute a period of probation.

8. A preponderance of the evidence shows that Petitioner made repeated material misrepresentations when he submitted four inaccurate F-3 Personal History Statements and one inaccurate F-8 Background Investigation form to North Carolina law enforcement agencies. The record of investigation presented by Squires, McCall, and the F-3 and F-8 forms at issue demonstrate that Petitioner falsely misrepresented his 2002 employment with IPC International and his termination from that position. Petitioner's claim that he simply forgot about the position lacks credibility. All substantive evidence in this case suggests that Petitioner knowingly misrepresented the state of his previous employment in order to gain employment opportunities.

PROPOSAL FOR DECISION

NOW, THEREFORE, based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, I PROPOSE that Respondent's denial of Petitioner's law enforcement officer certification for a period of not less than five (5) years be suspended and a period of probation be substituted for it.

NOTICE

The Agency making the Final Decision in this contested case is required to give each party an opportunity to file Exceptions to the Proposal for Decision, to submit Proposed Findings of Fact and to present oral and written arguments to the Agency. N.C. Gen. Stat. ' 150B-40(e).The Agency that will make the Final Decision in this contested case is the North Carolina Criminal Justice Education and Training Standards Commission.

This the _____ day of November, 2012.

Fred G Morrison Jr.

Senior Administrative Law Judge

