

STATE OF NORTH CAROLINA
COUNTY OF CLEVELAND

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12 DOJ 02778

TIMMY DEAN ADAMS,
Petitioner,

v.

N.C. Department of Justice, Company
Police Program
Respondent.

FINAL DECISION

In accordance with North Carolina General Statute § 150B-23, Petitioner requested the designation of an administrative law judge to preside at an Article 3, North Carolina General Statute Chapter 150B, contested case hearing of this matter. Based upon the Petitioner's request, Administrative Law Judge Selina M. Brooks heard this contested case in Morganton, North Carolina on November 19, 2012.

APPEARANCES

Petitioner: *Pro se*

Respondent: Catherine F. Jordan
Attorney for Respondent
Department of Justice
Law Enforcement Liaison Section
P.O. Box 629
Raleigh, N.C. 27602-0629

ISSUES

Is Respondent's proposed denial of Petitioner's company police officer certification, based upon Petitioner's commission of the felony offense of obtaining property by false pretenses, supported by a preponderance of the evidence?

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.

RULES

12 NCAC 02I .0212(a)(1)
12 NCAC 02I .0213(a)
N.C.G.S. § 14-100(a)

FINDINGS OF FACT

1. On February 21, 1997, Timmy Dean Adams (“Petitioner”) became employed as a certified law enforcement officer with the Kings Mountain Police Department. (Respondent’s exhibit 5)
2. On October 31, 2011, Marty Blanton with the Kings Mountain Police Department sent an email to the Police Department that stated that “I will need everyone’s time card this Friday, November 4th to do payroll. Should anyone have any adjustments that need to be made, please let me know by 0830 Hours on Monday Morning, November 7th.” (Respondent’s exhibit 17)
3. Petitioner completed his time card for the week of October 30, 2011 through November 4, 2011. (Respondent’s exhibit 8) Petitioner wrote that he should be compensated for eight hours of overtime for Tuesday, November 1, 2011 because he was in court.
4. On November 15, 2011, Captain E. Derek Johnson (“Captain Johnson”) wrote a memorandum to Chief Proctor. (Respondent’s exhibit 6) The memorandum stated that Katie Sawyer with the District Attorney’s office contacted Captain Johnson, and stated that some officers were not showing up for district court or were coming in late. Sawyer stated that Petitioner “comes in late every month District court is in section [sic],” and stated that on “his last court date, which was November 1, 2011, [Petitioner] came into court around 11:00 am.”
5. Captain Johnson investigated this allegation, and pulled Petitioner’s weekly time cards from September to October. Captain Johnson compared the time cards with Petitioner’s assigned court dates to see if any discrepancies were noted. It was noted that on the September time card, Petitioner listed six hours overtime for court on September 6, 2011, on the October 4 court date no time entry was made on the card which would indicate that

Petitioner did not show up for court, and on the November 1 court date, Petitioner listed eight hours overtime on his time card for court.

6. Captain Johnson contacted Andy McNeely with the Cleveland County Sheriff's Department to inquire about when Petitioner entered the courthouse on November 1, 2011. Captain Johnson's memorandum stated that "[t]his is done though the courthouse security access computer program. Every authorized person is issued a wireless photo ID card that when swiped on any access door will indicate the date, time and which authorized person gained access to the courthouse." Officer McNeely advised that on November 1, 2011, Petitioner entered the rear door access point of the courthouse at 10:39am. Captain Johnson's memorandum stated that "[t]his would show a discrepancy between the time card hours and the actual time [Petitioner] entered the courthouse. With the 8 hours listed on his time card, that would indicate [Petitioner] was in court until 6:30pm."
7. On November 16, 2011, Captain Johnson interviewed Petitioner. Captain Johnson's memorandum stated: "As soon as [Petitioner] opened up his IA letter and read it he immediately stated that he made a costly mistake and that he was only at court for 4 hours. He stated that he got there [sic] around 10:30 or 11:00 and left the courthouse around 2:30 the same day."
8. Captain Johnson found that: "The investigation reveals that after speaking with ADA Katie Sawyer that [Petitioner] either comes into court late or he doesn't show up at all for District court. The facts indicate through [Petitioner's] time cards that on October 4th, [Petitioner] was absent from his assigned court date. The facts indicate[d] that on the November time card of [Petitioner] he indicated he was in District court for a total of 8 hours, when in fact he was in court only 4 hours by his own admission."
9. Captain Johnson concluded that: "The Internal Investigation reveals that on November 1, 2011, that [Petitioner] did falsify his weekly time card by putting 8 hours for court when in fact he only was in court for 4 hours. This clearly indicates personal monetary gain through the falsification of his time card." Captain Johnson recommended that Petitioner be terminated from employment with the City of Kings Mountain.
10. On November 21, 2011, Respondent received a Report of Separation Form F-5B from Kings Mountain Police Department for Petitioner. (Respondent's exhibit 5) The Form F-5B states that Petitioner had been employed with Kings Mountain Police Department for fourteen and one-half years from February 21, 1997. The Form F-5B states that the final date of separation was November 16, 2011. The Form F-5B states that the reason for separation was resignation. The Form F-5B states that the agency would not consider the individual for reappointment, and that the agency would not recommend employment elsewhere as a criminal justice officer.
11. On December 23, 2011, Respondent received an application for commission as a company police officer with Allied Barton Company Police for Petitioner. (Respondent's exhibit 1)

12. On December 23, 2011, Respondent received a Report of Appointment Form F-5A from Allied Barton Company Police for Petitioner's application for commission as a company police officer. (Respondent's exhibit 2)
13. On December 23, 2011, Respondent received a Personal History Statement Form F-3 from Allied Barton Company Police for Petitioner's application for commission as a company police officer. (Respondent's exhibit 3) Petitioner signed and notarized this Form F-3 on November 22, 2011.
14. Question 26 on Petitioner's Form F-3 states "If you have ever been discharged or requested to resign from any position because of criminal or personal misconduct or rules violations, give details[.]" (Respondent's exhibit 3) Petitioner answered this question: "(Yes) I was ask [sic] for resign because I mistakenly wrote 4 hours extra on my time card, I had went to court and usually we have 8 hour days in court and I only had 4 hours in court that day."
15. Question 31 on Petitioner's Form F-3 states "List all the jobs you have held in the last ten years." Petitioner answered that he had been employed as a Patrolman with the Kings Mountain Police Department from March 2009 through November 2011, and that he had resigned. Petitioner also listed that he had been in law enforcement since 1996.
16. Respondent's Officer Complete History Form states that Petitioner was employed with the Kings Mountain Police Department from February 12, 1997 through November 16, 2011. (Respondent's exhibit 4)
17. On February 6, 2012, Respondent received the memorandum which Captain Johnson wrote to Chief Proctor on November 21, 2011. (Respondent's exhibit 6)
18. On February 6, 2012, Respondent received a copy of Petitioner's time card for the week of October 30, which would be from October 30 through November 4. (Respondent's exhibit 8) The time card indicated that Petitioner wrote eight hours for overtime pay for November 1, 2011 because of court.
19. On February 1, 2012, Respondent's Administrator Marvin Clark ("Clark") spoke with Captain Johnson. (Respondent's exhibit 10) Captain Johnson told Clark that Petitioner submitted a time sheet on November 4, 2011 indicating that Petitioner was in court on November 1, 2011. He stated that Petitioner received overtime for eight hours. Captain Johnson told Clark that Petitioner did not arrive at court until 10:39am on November 1, 2011, that Petitioner wrote he was present for eight hours when he was only present for four hours, and that he was paid for the four hours he did not work which amounted to \$56.97.
20. On April 2, 2012, Respondent sent a letter to Petitioner finding probable cause to deny Petitioner's application for commission because probable cause existed to believe that

Petitioner committed the felony offense of obtaining property by false pretenses when Petitioner submitted a time card that stated Petitioner worked eight hours when Petitioner only worked four hours, and received compensation of \$56.97 for the four extra hours. (Respondent's exhibit 11)

22. On or about April 10, 2012, Petitioner wrote a notarized letter which stated that on October 31, 2011, he had received an email stating that all of the time cards had to be turned in by Friday, November 4 due to a holiday which was coming up, and their shift cards were turned in on Sunday night, which was October 30. (Respondent's exhibit 15)
23. On August 14, 2012, Petitioner submitted sworn answers to Respondent's requests for admissions. (Respondent's exhibit 16) Petitioner admitted that he submitted a time sheet on November 4, 2011 that referenced a court appearance he made on November 1, 2011. Petitioner admitted that he arrived at Cleveland County District Court at 10:39am on November 1, that he left Cleveland County District Court around 2:30pm, that he submitted a time sheet that he spent eight hours in Cleveland County District Court, that he only spent four hours in Cleveland County District Court, and that he received compensation in the amount of \$56.97 for the four hours he falsely put on his time sheet. (Respondent's exhibit 16)
24. Petitioner requested an administrative hearing on Respondent's finding of probable cause.
25. Kings Mountain Police Department Corporal Putnam testified that he had been employed with the Kings Mountain Police Department and that he was Petitioner's supervisor. He testified that he discussed the time to write down on Petitioner's time card for the week of October 30 through November 4. He stated that the protocol for time cards was that he would complete the time cards, write down overtime, initial the time cards, and turn in the time cards on Friday morning for the previous Sunday through Thursday week. The time cards would then get turned in to the administrator. He identified Respondent's exhibit 8 as Petitioner's time card for the week of October 30 through November 4. Corporal Putnam testified that he wrote down the information in the date/time column, the job type column, and the regular hours column. He testified that Petitioner wrote down in the overtime column that he had worked for eight hours. Corporal Putnam testified that Petitioner could have notified the administrator to make an adjustment to the time card.
26. Kings Mountain Police Department telecommunicator Anissa Hudson testified that they received an email from the administrative assistant to the chief, Marty Blanton, at some point stating that they needed to turn in time cards that week for a holiday. Hudson identified the email marked as Respondent's exhibit 17 which stated that they needed to complete the time cards by November 4, but that they could make corrections through Monday morning on November 7.
27. Captain Johnson testified that he had been employed with the Kings Mountain Police Department since 1982 and had been in law enforcement for thirty-one years. Captain Johnson testified that he learned about Petitioner not showing up or showing up late for

district court after speaking with Katie Sawyer from the District Attorney's office. Captain Johnson testified that he spoke with the Sheriff's office and pulled the key card for Petitioner, which showed that Petitioner entered the courthouse around 10:39am and left the courthouse around 2:30pm on November 1. He testified that he handed Petitioner a letter concerning an internal investigation, and that when Petitioner opened the letter, he admitted that he had made a mistake. Captain Johnson interviewed Petitioner, and the video recording of the interview was introduced into evidence and shown at the administrative hearing. He asked Petitioner if he had received payment for the four hours which he did not work, and Petitioner stated that he did receive payment. Petitioner did not say anything at the interview about having to turn in the cards early. Captain Johnson spoke with Chief Proctor after interviewing Petitioner, and the Chief said that they were going to terminate Petitioner. Captain Johnson went to Petitioner's residence and told him that they wanted to afford him the opportunity of resigning before termination, and Petitioner resigned.

28. Petitioner testified that he had been employed with the Kings Mountain Police Department for fifteen years, and that he had been in law enforcement for seventeen years. He testified that the protocol for completing time cards is that the corporal usually fills out the time cards, and the officer signs them. Petitioner testified that the protocol for court appearances is that court begins at 9:00am, that they have about one court appearance per month that they are required to attend, and that court ends depending on the disposition of cases. Petitioner admitted that Corporal Putnam completed Petitioner's time card for the October 30 through November 4 work week, and Corporal Putnam completed the date column, the job code column, and the regular hours column. Petitioner admitted that he completed his time card for eight hours for overtime compensation for November 1. Petitioner admitted that he did not correct his time card even though he only worked four hours instead of eight hours, and he admitted that he received compensation for the four hours that he did not work.
29. Clark testified that he was employed with the North Carolina Attorney General's Office as the administrator for the Company Police Program and he conducted an investigation for Petitioner's company police officer commission application. Clark testified that he received the application for company police officer commission, the report of appointment form, and the personal history statement for Petitioner's application for commissioning as a company police officer with Allied Barton Company Police. He testified that he also received documentation concerning Petitioner's separation from the Kings Mountain Police Department. Clark testified that he received the documentation from the internal investigation at Kings Mountain Police Department, spoke with witnesses, and concluded that probable cause existed that Petitioner committed the felony offense of obtaining property by false pretenses.

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 this 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. Respondent has the authority granted under Chapter 74E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 2I, to commission company police officers and to revoke, suspend or deny such commission.
3. 12 NCAC 02I .0212(a)(1) states that “A company police commission shall be revoked or denied upon a finding that the officer has committed or been convicted of . . . any felony unless granted an unconditional pardon of innocence[.]”
4. 12 NCAC 02I .0213(a) states that “When the Attorney General, or his designee, suspends or denies the commission of a company police officer, the period of sanction shall not be less than three years.”
5. N.C.G.S. § 14-100(a) states that:

If any person shall knowingly and designedly by means of any kind of false pretense whatsoever, whether the false pretense is of a past or subsisting fact or of a future fulfillment or event, obtain or attempt to obtain from any person within this State any money, goods, property, services, chose in action, or other thing of value with intent to cheat or defraud any person of such money, goods, property, services, chose in action or other thing of value, such person shall be guilty of a felony: Provided, that if, on the trial of anyone indicted for such crime, it shall be proved that he obtained the property in such manner as to amount to larceny or embezzlement, the jury shall have submitted to them such other felony proved; and no person tried for such felony shall be liable to be afterwards prosecuted for larceny or embezzlement upon the same facts: Provided, further, that it shall be sufficient in any indictment for obtaining or attempting to obtain any such money, goods, property, services, chose in action, or other thing of value by false pretenses to allege that the party accused did the act with intent to defraud, without alleging an intent to defraud any particular person, and without alleging any ownership of the money, goods, property, services, chose in action or other thing of value; and upon the trial of any such indictment, it shall not be necessary to prove either an intent to defraud any particular person or that the person to whom the false pretense was made was the person defrauded, but it shall be sufficient to allege and prove that the party accused made the false pretense charged with an intent to defraud. If the value of the money, goods, property, services, chose in action, or other thing of value is one hundred thousand dollars (\$100,000) or more, a violation of this section is a Class C felony. If the value of the money, goods, property, services, chose in action, or other thing of value is less than one hundred thousand dollars (\$100,000), a violation of this section is a Class H felony.

5. The preponderance of the evidence supports the conclusion that Petitioner committed the felony offense of obtaining property by false pretenses.
6. Petitioner has the burden of proof. Petitioner has failed to show, by a preponderance of the evidence, that Respondent improperly denied his application for company police officer commission.
7. Respondent's denial of the Petitioners company police officer commission is supported by substantial evidence.

FINAL DECISION

NOW, THEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, the Undersigned orders that the Respondent deny the Petitioner's company police officer commission for a period of three years because he committed the felony offense of obtaining property by false pretenses.

NOTICE

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule 25 N.S. Admin. Code 03.012, and the Rules of Civil Procedure, N.C. General Statute § 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. General Statute § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. General Statute § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 20th day of December, 2012.

Selina M. Brooks
ADMINISTRATIVE LAW JUDGE