

STATE OF NORTH CAROLINA
COUNTY OF ROBESON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12 DOJ 03842

SHERMAN MONTRELL DEVON)
MCQUEEN,)
)
Petitioner,)
)
v.)
)
N.C. CRIMINAL JUSTICE)
EDUCATION AND TRAINING)
STANDARDS COMMISSION,)
)
Respondent.)

PROPOSAL FOR DECISION

THE ABOVE-ENTITLED MATTER was heard before the undersigned Augustus B. Elkins II, Administrative Law Judge, on September 13, 2012, in Fayetteville, North Carolina. This case was heard pursuant to N.C.G.S. § 150B-40(e), designation of an Administrative Law Judge to preside at the hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes. The Petitioner submitted a letter on September 28, 2012 thanking the Office of Administrative Hearings (OAH) for giving him the opportunity for a hearing and reiterating part of his testimony. The record was left open for the parties' submission of further materials, including but not limited to supporting briefs, memorandums of law and proposals. Respondent filed proposals with the Clerk of the Office of Administrative Hearings (OAH) on October 17, 2012. The record was kept open an additional 15 business days for filing by the Petitioner. Receiving nothing further from the Petitioner, the record was closed on November 7, 2012.

APPEARANCES

For Petitioner: Sherman Montrell Devon McQueen, *pro se*
12350 NC Hwy. 130
Maxton, North Carolina 28364

For Respondent: Catherine F. Jordan,
Assistant Attorney General
N.C. Department of Justice
9001 Mail Service Center
Raleigh, North Carolina 27699-9001

ISSUE

Whether grounds exist for Respondent to deny Petitioner's application for certification as a law enforcement officer based on Petitioner making a knowing material misrepresentation of information required for certification?

EXHIBITS

Petitioner's Exhibits A and B were introduced and admitted.

Respondent's Exhibits 1-20 were introduced and admitted.

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 by a preponderance of the evidence. In making these Findings of Fact, the Undersigned 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 this case.

FINDINGS OF FACT

1. Petitioner received the notification of Proposed Denial of Law Enforcement Officer Certification through a letter mailed by Respondent on March 13, 2012. (Respondent's Exhibit 17)
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. On January 22, 2010, Petitioner completed a Form F-3 Personal History Statement to be submitted to the Commission for certification as a law enforcement officer. (Respondent's exhibit 1) Petitioner's January 22, 2010 Form F-3 Personal History Statement was submitted to the Commission for certification with Maxton Police Department. Petitioner signed, dated, and notarized his Form F-3 Personal History Statement. Directly above Petitioner's signature is a paragraph that states that:

"I hereby certify that each and every statement made on this form is true and complete and I understand that any misstatement or omission of information will subject me to disqualification or dismissal. I also acknowledge that I have a continuing duty to update all information contained in this document. I will report to the employing agency and forward to the N.C. Criminal Justice Education and Training Standards Commission any additional information which occurs after the signing of this document."

- A. Question 26 of Petitioner's January 22, 2010 Form F-3 Personal History Statement 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[.]" (Respondent's exhibit 1) Petitioner answered "NA."

- a. On November 3, 2011, Respondent's Investigator Richard Squires (Squires) interviewed Petitioner at the Maxton Police Department. (Respondent's exhibit 16) During the interview, Petitioner told Squires that when he was in high school in approximately 1992 to 1993, he worked at Food Folks. Petitioner stated that he was fired from this position and believed it was because of his attendance.
- b. During discovery, Petitioner admitted in his Requests for Admissions that he worked at Food Folks in 1992 to 1993 and that he was fired from his employment at Food Folks because of excessive absences. (Respondent's exhibit 20)
- c. Petitioner stated in his interrogatories that "Food folks was a part time job I had when I was in high school. I was terminated because I was late most days and some days I didn't even bother to go to work. Toward the end of my termination I just lost interest in the job, laid out too many days and

thereafter I was fired due to excessive absences.” (Respondent’s exhibit 20)

- d. Petitioner was not being truthful when he answered Question 26 of his January 22, 2010 Form F-3 because he did not disclose that he was fired from Food Folks in 1992 or 1993 because he did not show up for work.
- B. Question 31 on Petitioner’s January 22, 2010 Form F-3 Personal History Statement stated: “List all the jobs that you have held in the last ten years. Put your present or most recent job first. If you need more space, you may attach additional sheets. Include military service in proper time sequence and temporary part-time jobs.” (Respondent’s exhibit 1)
- a. On November 3, 2011, Squires interviewed Petitioner at the Maxton Police Department. (Respondent’s exhibit 16) During the interview, Petitioner told Squires that in 2000, he worked part-time at the Family Dollar Store in Laurinburg, North Carolina. He stated that he was working there when he was charged with rape, although the charge has now been expunged.
 - b. Petitioner also told Squires that he worked as a disc jockey between 2001 and 2003.
 - c. During discovery, Petitioner answered interrogatories that “I started working for Family Dollar store Located 1112 Aberdeen Road Laurinburg N.C. on September 18, 1999 and I quit on February 1, 2000.” (Respondent’s exhibit 20)
 - d. Petitioner answered interrogatories that “I actually started working as a Disc Jockey Prior to 2001 I did some regretful guessing on dates I disclosed on my application and to Mr. Richard Squires.” (Respondent’s exhibit 20)
 - e. Petitioner answered interrogatories that “My employment with Family Dollar never even crossed my mind until I was questioned on November 23, 2011 at the Maxton Police Department by Mr. Richard Squires and Another gentleman, questioned me about a the second degree rape charge I had Legally expunged off my record by a District Court Judge on October 23, 2008. It was then I realized that I met Tiawarren Dunlap the accuser at Family Dollar, my place of employment at the time.” [sic] (Respondent’s exhibit 20)
 - f. Petitioner testified that he worked as a disc jockey between 1999 and 2003. Petitioner admitted that he failed to list his employment as a disc jockey, and admitted that he failed to answer this question truthfully.

- g. Petitioner testified that he failed to list his employment with Family Dollar on his Forms F-3.
 - h. Petitioner was not being truthful when he answered Question 31 of his January 22, 2010 Form F-3 because he did not disclose that he was employed by Family Dollar in 2000 and he did not disclose that he was employed as a disc jockey between 1999 and 2003.
- C. Question 52 of Petitioner's January 22, 2010 Form F-3 Personal History Statement stated: "Have you ever been on probation?" (Respondent's exhibit 1) Petitioner answered "yes" and answered "12-1994 Hit and Run 1 year unsupervised probation."
- a. On February 12, 2010, a criminal record search was conducted on Petitioner in Scotland County, North Carolina. (Respondent's exhibit 2)
 - b. The criminal record search showed that Petitioner was convicted on February 16, 1995 of hit/run, leaving the scene, property damage, and that the trial court entered a suspended sentence of thirty days with one year of unsupervised probation. (Respondent's exhibit 3, 5)
 - c. The criminal record search also showed that Petitioner was convicted on October 22, 1998 of carrying a concealed gun, and that the trial court entered a suspended sentence of thirty days with one year of unsupervised probation. (Respondent's exhibit 4, 6)
 - d. On August 8, 2011, Petitioner wrote a statement concerning his hit and run conviction, and Respondent received his statement on August 17, 2011. (Respondent's exhibit 7) Petitioner's statement stated:

"My mother and I were headed to the hospital in Laurinburg to see my new born sister; she was a few days old. After we arrived at the hospital I asked my mom if I could go to the pawn shop to browse around a little before going into the hospital. I could tell she really didn't want to but I told her I wouldn't be long so she agreed. All I wanted to do was cruise around town; the pawn shop was the last thing on my mind. That was until I rear ended a white car after being distracted by some girls walking along the side walk. After hitting the car I left the scene of the accident like a dummy, hoping no one seen my license plate. [sic] Not concerned about the well-being of the individuals in the vehicle I had hit, man that was really stupid. While traveling to the hospital I tried to think of what kind of lie I was going to tell my mother. I arrived at the hospital and backed the car in so I could say that someone hit the car and left. I went into the hospital scared. Hoping that she would believe the big lie I was

going to tell her when we got ready to go. We left the hospital building and as we approached the car I said Mom look, somebody hit dad's car and left. She replied by saying that's what it looks like, go inside the hospital and call the police. In my mind now is, O lord, my dad's going to kill me. I called the police and they came. The first thing the officer did was go into the trunk of his car and got out a broken piece of headlight film from the traffic accident, and matched it up with the headlight on my car. [sic] That was it, I was caught. At that point I decided to confess [sic] everything to my mom and the police. She followed me to the magistrate office after the officer handcuffed me and put in the back of his car. I was released on a written promise to appear in court. She was very disappointed; I could see it all over her face. I was sincerely guilty therefore in court I pleaded guilty. I knew I had done wrong, no reason to keep lying."

- e. On August 8, 2011, Petitioner wrote a statement concerning his carrying a concealed gun conviction, and Respondent received his statement on August 17, 2011. (Respondent's exhibit 8) Petitioner's statement stated:

"I was leaving Maxton headed to Laurinburg on hwy 74 traveling west with my music playing loud. About 300 feet away from the bus station in Laurinburg on a little side street came along an unmarked police car. I didn't know at the time that it was a police car until he got in behind me and activated his blue lights. I turned off my music and pulled over. He came to my car and asked me why I was playing my music so loud. I don't remember what I told him, after that the officer Dean Murphy asked me for my license and registration. He took it and went to this car and wrote me a warning ticket for my loud music. After he gave me the ticket he asked if I had anything illegal in the car. Before I could respond he opened the door, shined the flashlight in the side compartment of my driver's door where the gun was located. It happened so fast, I panicked that's why I couldn't get my words out fast enough. He charged me with carrying a concealed gun. I went to court, explained it to the judge and I was still found guilty. I told the judge I was nervous and I had no reason to lie because the gun was registered to me why would I not tell the officer about it. I was still found guilty. I asked the judge if I could get my gun back and the officer step in and said that he wanted it to be destroyed. So I was found guilty, had to pay a fine, and the most damaging was I added another charge on my criminal background record. [sic]"

- f. Petitioner was not being truthful when he answered Question 52 of his January 22, 2010 Form F-3 Personal History Statement because he did not disclose that he was placed on probation in October 1998 for his conviction of carrying a concealed weapon.

- D. Question 57 of Petitioner's January 22, 2010 Form F-3 Personal History Statement stated: "Was your license ever suspended or revoked?" (Respondent's exhibit 1) Petitioner answered "no."
- a. A certified copy of Petitioner's driving record from the North Carolina Division of Motor Vehicles showed that Petitioner's driver's license was suspended on June 22, 2001 for failure to appear in court. (Respondent's exhibit 9)
 - b. The certified copy of Petitioner's driving record from the North Carolina Division of Motor Vehicles also showed that Petitioner's driver's license was suspended on December 1, 1998 for failure to appear in court. (Respondent's exhibit 9)
 - c. On November 14, 2010, Petitioner provided a statement that in 1994 through 1998, his driver's license was suspended. (Respondent's exhibit 10) Petitioner stated that it was suspended because his roommate used his driver's license, and, because of his roommate's conduct, Petitioner's driver's license was suspended. Petitioner does not deny that he knew about his driver's license being suspended in 1994 through 1998.
 - d. On August 8, 2011, Petitioner wrote a statement concerning his suspended driver's license, and Respondent received his statement on August 17, 2011. (Respondent's exhibit 11) Petitioner's statement stated:

"I don't know exactly what day my roommate Jamal McLaurin, used my driver's license without my consent, he'd got a citation for speeding, didn't pay the fine nor did he go to court. As a result of him doing this, on February 23, 1999 after I made an unlawful u-turn in Rowland, N.C. I was informed that my license was suspended/revoked. At that point and time, I didn't know why my license was revoked/suspended; therefore, I went to the DMV office in Lumberton, N.C. and found out about his citation. I cleared my name by contacting the officer who written the citation, and the officer knew right way when he saw me that I wasn't the one he had issued the citation to. I didn't realize until now that I forgot to include this information on my F-3 for BLET on March 2010. This was an honest mistake. Another Incident happened with my driver's license though I'm not for sure exactly what time I wanna say three or four years ago I receive a notice from DMV stating that I had to go see a Inspector at DMV in reference to my driver's license. All it was where a mistake by a drivers license examiner had my picture with someone else's name, or vica versa [sic] as I stated earlier its been some years that it happend so I'm doing the best I can to remember everything as it happend. [sic] The inspectors name was Aaron Carter that took care of the mistake."

- e. Petitioner was not being truthful when he answered Question 57 on his January 22, 2010 Form F-3 because he did not disclose that his driver's license was suspended in 2001 for failure to appear in court and that it was suspended in 1998 for failure to appear in court.
- 6. On November 15, 2010, Petitioner completed a Form F-3 Personal History Statement to be submitted to the Commission for certification as a law enforcement officer with Red Springs Police Department. (Respondent's exhibit 12) Petitioner signed, dated, and notarized his Form F-3 Personal History Statement. Directly above Petitioner's signature is a paragraph that states that:

"I hereby certify that each and every statement made on this form is true and complete and I understand that any misstatement or omissions of information will subject me to disqualification or dismissal. I also acknowledge that I have a continuing duty to update all information contained in this document. I will report to the employing agency and forward to the N.C. Criminal Justice Education and Training Standards Commission any additional information which occurs after the signing of this document."

 - A. Question 26 of Petitioner's November 15, 2010 Form F-3 Personal History Statement 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[.]" (Respondent's exhibit 12) Petitioner answered "NA." Petitioner was not being truthful when he answered this question because he did not disclose that he was fired from Food Folks in 1992 or 1993 because he did not show up for work.
 - B. Question 31 of Petitioner's November 15, 2010 Form F-3 Personal History Statement stated: "List all the jobs that you have held in the last ten years. Put your present or most recent job first. If you need more space, you may attach additional sheets. Include military service in proper time sequence and temporary part-time jobs." (Respondent's exhibit 12) Petitioner was not being truthful when he answered this question because he did not disclose that he was employed by Family Dollar in 2000 and he did not disclose that he was employed as a disc jockey between 1999 and 2003.
 - C. Question 52 of Petitioner's November 15, 2010 Form F-3 Personal History Statement stated: "Have you ever been on probation?" (Respondent's exhibit 12) Petitioner answered "yes" and answered "12-1994 Hit and Run 1 year unsupervised probation." Petitioner was not being truthful when he answered Question 52 of Petitioner's November 15, 2010 Form F-3 Personal History Statement because he did not disclose that he was placed on probation in October 1998 for his conviction of carrying a concealed weapon.
 - D. Question 57 of Petitioner's January 22, 2010 Form F-3 Personal History Statement stated: "Was your license ever suspended or revoked?" (Respondent's

exhibit 12) Petitioner answered “yes” and “explained.” Petitioner included a statement that stated that his driver’s license was suspended because his roommate used his driver’s license, and, because of his roommate’s conduct, Petitioner’s driver’s license was suspended. Petitioner does not deny that he knew about his driver’s license being suspended in 1994 through 1998. Petitioner was not being truthful when he answered this question because he did not disclose that his driver’s license was suspended in 2001 for failure to appear in court.

7. On January 3, 2011, Petitioner completed a Form F-3 Personal History Statement to be submitted to the Commission for certification as a law enforcement officer with Maxton Police Department. (Respondent’s exhibit 12) Petitioner signed, dated, and notarized his Form F-3 Personal History Statement. Directly above Petitioner’s signature is a paragraph that states that:

“I hereby certify that each and every statement made on this form is true and complete and I understand that any misstatement or omissions of information will subject me to disqualification or dismissal. I also acknowledge that I have a continuing duty to update all information contained in this document. I will report to the employing agency and forward to the N.C. Criminal Justice Education and Training Standards Commission any additional information which occurs after the signing of this document.”

- A. Question 26 of Petitioner’s January 3, 2011 Form F-3 Personal History Statement 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[.]” (Respondent’s exhibit 13) Petitioner answered “NA.” Petitioner was not being truthful when he answered this question because he did not disclose that he was fired from Food Folks in 1992 or 1993 because he did not show up for work.
- B. Question 31 of Petitioner’s January 3, 2011 Form F-3 Personal History Statement stated: “List all the jobs that you have held in the last ten years. Put your present or most recent job first. If you need more space, you may attach additional sheets. Include military service in proper time sequence and temporary part-time jobs.” (Respondent’s exhibit 13) Petitioner was not being truthful when he answered this question because he did not disclose that he was employed as a disc jockey between 1999 and 2003.
- C. Question 52 of Petitioner’s January 3, 2011 Form F-3 Personal History Statement stated: “Have you ever been on probation?” (Respondent’s exhibit 13) Petitioner answered “yes” and answered “12-1994 Hit and Run 1 year unsupervised probation.” Petitioner was not being truthful when he answered Question 52 on Petitioner’s January 3, 2011 Form F-3 Personal History Statement because he did not disclose that he was placed on probation in October 1998 for his conviction of carrying a concealed weapon.
- D. Question 57 of Petitioner’s January 3, 2011 Form F-3 Personal History Statement

stated: “Was your license ever suspended or revoked?” (Respondent’s exhibit 13) Petitioner answered “yes” and “explained.” Petitioner included a statement that stated that his driver’s license was suspended because his roommate used his driver’s license, and, because of his roommate’s conduct, Petitioner’s driver’s license was suspended. Petitioner does not deny that he knew about his driver’s license being suspended in 1994 through 1998. Petitioner was not being truthful when he answered this question because he did not disclose that his driver’s license was suspended in 2001 for failure to appear in court.

8. On August 8, 2011, investigator Captain TR Deese completed a Mandated Background Investigation Form F-8 for Petitioner’s application for certification as a law enforcement officer with the Commission for employment with Maxton Police Department. (Respondent’s exhibit 14) Respondent received this Mandated Background Investigation Form F-8 on September 9, 2011.

- A. Question 9 of Petitioner’s August 8, 2011 Mandated Background Investigation Form F-8 stated: “Has your driver’s license ever been suspended or revoked?” (Respondent’s exhibit 14) Petitioner answered “12 years ago roommate got ticket in his name and license revoked/Fict. Info. By roommate/Cleared.” Petitioner was not being truthful when he answered this question because he did not disclose that his driver’s license was suspended in 2001 for failure to appear in court.

- B. Question 30 of Petitioner’s August 8, 2011 Mandated Background Investigation Form F-8 stated: “Have you ever been terminated or asked to resign from any employment?” (Respondent’s exhibit 14) Petitioner answered “no sir.” Petitioner was not being truthful when he answered this question because he did not disclose that he was fired from Food Folks in 1992 or 1993.

9. On August 8, 2011, Maxton Police Department submitted a Report of Appointment Form F-5A to the commission for Petitioner’s application for law enforcement officer certification. (Respondent’s exhibit 15) Petitioner signed and dated the Report of Appointment Form F-5A on August 8, 2011. Directly above Petitioner’s signature states:

“As the applicant for certification, I attest that I am aware of the minimum standards for employment, that I meet or exceed each of those requirements, that information provided above and all other information submitted by me, both oral and written throughout the employment and certification process, is thorough, complete, and accurate to the best of my knowledge. I further understand and agree that any omission, falsification or misrepresentation of any factor portion of such information can be the sole basis for termination of my employment and/or denial, suspension or revocation of my certification as any time, now or later. I further understand that I have a continuing duty to notify the Commission of all criminal offenses which I am arrested for, charged with, plead no contest to, plead guilty to or am found guilty of. If applicable, I specifically acknowledge that my continued employment and certification are contingent on the results of the fingerprint records check and other criminal history records being consistent

with the information provided in a Personal History Statement and as reflected in this application.”

10. On December 5, 2011, Respondent’s Investigator Richard Squires submitted documentation to Respondent’s Probable Cause Committee for consideration of denial of Petitioner’s law enforcement officer certification. (Respondent’s exhibit 16) The Probable Cause Committee found probable cause existed to deny Petitioner’s application for law enforcement officer certification because he knowingly made fourteen material misrepresentations to the Commission.
11. On March 13, 2012, Respondent sent a letter for Proposed Denial of Law Enforcement Officer Certification to Petitioner. The letter stated that probable cause existed to deny Petitioner’s application for law enforcement officer certification based upon his fourteen material misrepresentations
12. Petitioner requested an administrative hearing.
13. Mr. Squires testified at the hearing that Respondent received documentation submitted on behalf of Petitioner for certification as a law enforcement officer with Maxton Police Department and Red Springs Police Department. Squires testified that he interviewed Petitioner on November 3, 2011, and that he collected documentation for Petitioner’s application for certification. Squires testified that it is important for the applicant for certification to be honest in the completion of the forms. He testified that honesty is also an important trait in law enforcement.
14. Petitioner testified that he completed the three Form F-3s and was interviewed for his Form F-8. Petitioner stated that he rushed through completing the forms and that he was not thorough. Petitioner testified that he had the opportunity to review these forms and was asked the questions during his investigation, but he failed to answer these questions correctly and truthfully. Petitioner also testified that in preparing for the hearing he noticed additional information that he omitted from his Form F-3, including the fact that he had a small yard care business that started in September 2008. Petitioner admitted that he did not answer the questions accurately. Petitioner testified that when he realized he omitted information, he did not correct his previously submitted information. Petitioner admitted that it is important for a law enforcement officer to be thorough and complete when they do their paperwork and investigate crimes, and that he was not thorough and complete when he did his application for certification or employment.
15. Petitioner testified that he completed the January 22, 2010 F-3 for Basic Law Enforcement Training, and was given the form by someone at Richmond County Community College. Squires testified that he thought that the January 22, 2010 Form F-3 was sent to his office from Maxton Police Department. Squires testified that usually the law enforcement agency submits a Form F-5A to Criminal Justice Training and Standards, and that the law enforcement agency maintains the Form F-3. When Criminal Justice Training and Standards needs the Form F-3, then it is requested from the agency,

and the agency forwards the document to Criminal Justice Training and Standards. Squires also testified that Connie Locklear, the notary public for the Maxton Police Department, was the notary for both of Petitioner's Form F-3 from January 2010 and January 2011. Squires also testified that the Form F-3s are only valid for one year, so Petitioner may have been requested to complete a second Form F-3 for Maxton Police Department in January 2011.

16. Petitioner stated that he wanted to be a law enforcement officer to give back to his community and provide for his family. He stated that his goal is to educate and deter young children away from violence, drugs, alcohol and gangs. He acknowledged that he had made mistakes in the past but that he was no longer that individual. He stated he had worked hard during his BLET training because he takes a law enforcement career very seriously.

17. Petitioner submitted several personal references found in Petitioner's Exhibits A and B. The retired Police Chief of the Town of Maxton wrote that "Mr. McQueen would be an asset to any police department." Other references describe the Petitioner as "respectful," "polite," "a team player," "clean cut," "reliable," "honest," "mature and responsible." He is also found by his references as having "the ability to make sound decisions," and "work with all types of different people." Major Kelly, one of Petitioner's BLET instructors, stated that Petitioner "would be the one in the class to tell people to calm down and pay attention." He stated that Petitioner was the one who "drove the furthest to class and never complained and then would go to work."

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 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) states that:
 - b) 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:

(6) 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. A preponderance of the evidence exists to support the conclusion that Petitioner knowingly made a material misrepresentation of information required for certification when Petitioner completed a Personal History Statement, Form F-3 on January 22, 2010. Petitioner made a material misrepresentation when he answered Question 26 and failed to truthfully answer when asked whether he had ever been discharged from employment for misconduct.
6. A preponderance of the evidence exists to support the conclusion that Petitioner knowingly made a material misrepresentation of information required for certification when Petitioner completed a Personal History Statement, Form F-3 on January 22, 2010. Petitioner made a material misrepresentation when he answered Question 31 and failed to truthfully answer when asked to list his prior employment.
7. A preponderance of the evidence exists to support the conclusion that Petitioner knowingly made a material misrepresentation of information required for certification when Petitioner completed a Personal History Statement, Form F-3 on January 22, 2010. Petitioner made a material misrepresentation when he answered Question 52 and failed to truthfully answer when asked whether he had ever been placed on probation.
8. A preponderance of the evidence exists to support the conclusion that Petitioner knowingly made a material misrepresentation of information required for certification when Petitioner completed a Personal History Statement, Form F-3 on January 22, 2010. Petitioner made a material misrepresentation when he answered Question 57 and failed to truthfully answer when asked whether his driver's license had ever been revoked.
9. A preponderance of the evidence exists to support the conclusion that Petitioner knowingly made a material misrepresentation of information required for certification when Petitioner completed a Personal History Statement, Form F-3 on November 15, 2010. Petitioner made a material misrepresentation when he answered Question 26 and failed to truthfully answer when asked whether he had ever been discharged from employment for misconduct.

10. A preponderance of the evidence exists to support the conclusion that Petitioner knowingly made a material misrepresentation of information required for certification when Petitioner completed a Personal History Statement, Form F-3 on November 15, 2010. Petitioner made a material misrepresentation when he answered Question 31 and failed to truthfully answer when asked to list his prior employment.
11. A preponderance of the evidence exists to support the conclusion that Petitioner knowingly made a material misrepresentation of information required for certification when Petitioner completed a Personal History Statement, Form F-3 on November 15, 2010. Petitioner made a material misrepresentation when he answered Question 52 and failed to truthfully answer when asked whether he had ever been placed on probation.
12. A preponderance of the evidence exists to support the conclusion that Petitioner knowingly made a material misrepresentation of information required for certification when Petitioner completed a Personal History Statement, Form F-3 on November 15, 2010. Petitioner made a material misrepresentation when he answered Question 57 and failed to truthfully answer when asked whether his driver's license had ever been revoked.
13. A preponderance of the evidence exists to support the conclusion that Petitioner knowingly made a material misrepresentation of information required for certification when Petitioner completed a Personal History Statement, Form F-3 on January 3, 2011. Petitioner made a material misrepresentation when he answered Question 26 and failed to truthfully answer when asked whether he had ever been discharged from employment for misconduct.
14. A preponderance of the evidence exists to support the conclusion that Petitioner knowingly made a material misrepresentation of information required for certification when Petitioner completed a Personal History Statement, Form F-3 on January 3, 2011. Petitioner made a material misrepresentation when he answered Question 31 and failed to truthfully answer when asked to list his prior employment.
15. A preponderance of the evidence exists to support the conclusion that Petitioner knowingly made a material misrepresentation of information required for certification when Petitioner completed a Personal History Statement, Form F-3 on January 3, 2011. Petitioner made a material misrepresentation when he answered Question 52 and failed to truthfully answer when asked whether he had ever been placed on probation.
16. A preponderance of the evidence exists to support the conclusion that Petitioner knowingly made a material misrepresentation of information required for certification when Petitioner completed a Personal History Statement, Form F-3 on January 3, 2011. Petitioner made a material misrepresentation when he answered Question 57 and failed to truthfully answer when asked whether his driver's license had ever been revoked.
17. A preponderance of the evidence exists to support the conclusion that Petitioner

knowingly made a material misrepresentation of information required for certification when Petitioner completed a Mandated Background Investigation Form F-8 on August 8, 2011. Petitioner made a material misrepresentation when he answered Question 9 and failed to truthfully answer when asked whether his driver's license had ever been suspended.

18. A preponderance of the evidence exists to support the conclusion that Petitioner knowingly made a material misrepresentation of information required for certification when Petitioner completed a Mandated Background Investigation Form F-8 on August 8, 2011. Petitioner made a material misrepresentation when he answered Question 30 and failed to truthfully answer when asked whether he had ever been terminated.
19. The findings of the Probable Cause Committee of the Respondent are supported by substantial evidence.
20. The Commission may suspend, revoke or deny the certification when it finds an applicant has knowingly made a material misrepresentation of any information required for certification. Further, the Commission may either reduce or suspend the period of sanction 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.
21. "The use of the word '*may*' generally connotes permissive or discretionary action and does not mandate or compel a particular act." Brock and Scott Holding, Inc. v. Stone, 203 N.C. App. 135, 137, 691 S.E.2d 37, 39 (2010) (quoting Campbell v. First Baptist Church of the City of Durham, 298 N.C. 476, 483, 259 S.E.2d 558, 563 (1979)) (emphasis added).

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:

PROPOSAL FOR DECISION

Petitioner failed to carry his burden of proof by a preponderance of the evidence that the Respondent acted erroneously and/or arbitrarily and/or capriciously in its decision to deny Petitioner's application for certification as a law enforcement officer. The finder of fact cannot properly act upon the weight of evidence, in favor of the one having the *onus*, unless it overbear, in some degree, the weight upon the other side. Petitioner's evidence in this case does not overbear in that degree required by law the weight of evidence of Respondent and therefore the decisions of the Probable Cause Committee are upheld. The entire Commission should review the references provided by Petitioner and speak further with Petitioner and seriously consider exercising its discretion in substituting a period of probation in this case.

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this Proposal for Decision, to submit proposed findings of fact, and to present oral and written arguments to the agency. N.C.G.S. § 150B-40(e). The agency that will make the final decision in this contested case is the North Carolina Criminal Justice Education and Training Standards Commission.

A copy of the final agency decision or order shall be served upon each party personally or by certified mail addresses to the party at the latest address given by the party to the agency and a copy shall be furnished to his attorney of record. N.C.G.S. § 150B-42(a). It is requested that the agency furnish a copy to the Office of Administrative Hearings.

IT IS SO ORDERED.

This is the 20th day of December, 2012.

Augustus B. Elkins II
Administrative Law Judge