

STATE OF NORTH CAROLINA
COUNTY OF NORTH HAMPTON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12 DOJ 05141

WALLACE CONNELL RANSOM,)
)
 Petitioner,)
 v.)
)
 N.C. SHERIFFS' EDUCATION AND)
 TRAINING STANDARARDS COMMISSION,)
)
 Respondent.)

PROPOSAL FOR DECISION

THE ABOVE-ENTITLED MATTER was heard before the undersigned Augustus B. Elkins II, Administrative Law Judge, on February 20, 2012, in Elizabeth City, 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 record was left open for the parties' submission of further materials, including but not limited to supporting briefs, memorandums of law and proposals. The Petitioner submitted a March 14, 2013 letter which was received by the Undersigned on March 18, 2013 setting forth proposed conclusions of law. Respondent filed proposals attached to a March 22, 2013 letter which was received by the Undersigned on March 26, 2013. The record was closed on March 26, 2013.

APPEARANCES

For Petitioner: Courtney S. Hull, Esq.
Attorney for Petitioner
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For Respondent: Matthew L. Boyatt, Assistant Attorney General
Attorney for Respondent
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ISSUES

Did Petitioner knowingly make a material misrepresentation of any information required for certification as a justice officer when he failed to disclose a 1992 Northampton County charge

of “DWI – Level 5 – Aid and Abet” during his application process?

Did Petitioner knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, obtain or attempt to obtain certification through the North Carolina Sheriffs’ Education and Training Standards Commission when he failed to disclose a 1992 Northampton County charge of “DWI – Level 5 – Aid/Abet” during his application process?

EXHIBITS

Petitioner’s Exhibits 1-22 were introduced and admitted.

Respondent’s Exhibits 1-11 were introduced and admitted.

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. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper with both parties receiving timely notice of hearing.
2. The North Carolina Sheriffs’ Education and Training Standards Commission (Sheriffs’ Commission) has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify justice officers and to deny, revoke, or suspend such certification.
3. Petitioner received a Notification of Probable Cause to Revoke Justice Officer Certification in an April 13, 2012 letter from Respondent.
4. The Petitioner was appointed as a detention officer through the Northampton County Sheriff’s Office on February 3, 1995. Thereafter, Petitioner was appointed as a deputy sheriff through the Northampton County Sheriff’s Office on June 3, 1996. Petitioner holds dual certification through the Sheriffs’ Commission.

5. Petitioner was also appointed as a police officer through the Garysburg Police Department on September 28, 2000. Petitioner currently holds certification through the Sheriffs' Commission and through the North Carolina Criminal Justice Education and Training Standards Commission (CJ Commission).

6. Some twenty-one (21) years ago, on January 3, 1992, Petitioner was charged with "DWI – Level 5 – Aid/Abet" in violation of North Carolina law. At the time Petitioner was charged with this offense, Petitioner was around 20 years of age. Petitioner testified that on January 3, 1992, he was a passenger in a motor vehicle being driven by Rodell Shearin. Mr. Shearin was leaving a graduation party where they both had been in attendance and he offered to give Petitioner a ride home. Not long afterward, Mr. Shearin was stopped by Trooper Lane of the North Carolina State Highway Patrol. Trooper Lane charged Shearin with Driving While Impaired. The Trooper asked Petitioner if he knew Shearin was impaired and Petitioner stated he did not. The Trooper said he was issuing him a citation for aiding and abetting anyway. Petitioner had to walk back to the party to catch another ride. Petitioner went to court in response to the citation issued by the Trooper and a member of the District Attorney's Office called him up and told him there was no probable cause, the case was dismissed, and Petitioner could go home.

7. The Petitioner completed a Personal History Statement (Form F-3), dated January 30, 1995, as part of his original employment application with the Northampton County Sheriff's Office, and in order to obtain certification as a justice officer from the Sheriffs' Commission.

8. Question No. 47 of the Sheriffs' Commission Form F-3 asked the applicant to disclose the following:

"Have you ever been arrested by a law enforcement officer or otherwise charged with a criminal offense?"

9. The instructions for Question No. 47 advised the Petitioner the following:

"If any doubt exists in your mind as to whether or not you were arrested or charged with a criminal offense at some point in your life . . . you should answer yes."

10. When the Petitioner completed Question No. 47, he answered "No".

11. At the time Petitioner completed the F-3 form in furtherance of his Northampton County Sheriff's Office application, Petitioner had earned a high school diploma from Northampton High School (class of 1989) and also completed the Jailer Certification Course through the North Carolina Sheriffs' Education and Training Standards Commission.

12. Diane Konopka, Deputy Director of the North Carolina Sheriffs' Education and Training Standards Division testified at the Contested Case Hearing. Ms. Konopka stated that at the time Petitioner completed the Detention Officer Certification Course in the mid-nineties, she

believed that students should have been advised in the Course Orientation block of training to disclose all criminal offenses they were ever charged with, regardless of the disposition of the charge. In addition, Ms. Konopka advised students should have been told by instructor(s) to provide full disclosure of criminal charges in applications to the North Carolina Sheriffs' Education and Training Standards Commission, in addition to any applications submitted to the North Carolina Criminal Justice Education and Training Standards Commission.

13. The Petitioner stated he did not intentionally omit information on his 1995 Personal History Statement (Form F-3). Rather, Petitioner testified that he did not disclose the Aid and Abet DWI charge on the F-3 Form because, though he was issued a citation, he was not arrested by the trooper, the charge was dropped by the District Attorney's Office for lack of probable cause and he was never convicted of the charge. Petitioner does not maintain that he forgot to list the criminal offense. Petitioner cited he did not intentionally omit the charge but believed it did not have to be listed based on the circumstances cited above.

14. On September 19, 2000, Petitioner completed another Personal History Statement (Form F-3), as part of his employment application with the Garysburg Police Department, and in order to obtain certification as a justice officer from North Carolina Criminal Justice Education and Training Standards Commission.

15. Question No. 47 of The CJ Commission Form F-3 asked the applicant to disclose the following:

"Have you ever been arrested by a law enforcement officer or otherwise charged with a criminal offense?"

16. The instructions for Question No. 47 advised the Petitioner the following:

"If any doubt exists in your mind as to whether or not you were arrested or charged with a criminal offense at some point in your life . . . you should answer yes."

17. When the Petitioner completed Question No. 47 on the September 19, 2000 F-3 Form, he answered "No".

18. Petitioner maintains that he did not disclose his Aid and Abet DWI charge on the 2000 F-3 form because he misunderstood the question to mean that only charges resulting in a conviction were required to be disclosed. Petitioner does not claim that someone told him to answer "No" on this question. Further, Petitioner does not claim that he made a mistake or forgot about the January 3, 1992 Aid and Abet DWI citation.

19. At the time Petitioner completed the September 19, 2000, F-3 Form, Petitioner testified that he had been a sworn deputy on the patrol division for at least three (3) years.

20. Petitioner testified that by the time he completed the September 19, 2000 F-3 Form,

he had issued hundreds of criminal citations and criminal warrants in furtherance of his duties as a sworn deputy. Further, Petitioner stated that by September 2000, he had assisted the State Highway Patrol with numerous DWI stops and investigations.

21. Petitioner testified that by September 2000, Petitioner had received periodic law enforcement training in order to maintain his certification and to keep current with the laws of the State of North Carolina. Petitioner testified that he did not have a problem learning or understanding the law, and that he was able to carry out his job functions effectively.

22. When Petitioner filled out the January 1995 Form F-3, he was given the form and told to fill it out in the deputy's room, which he did in 15 to 20 minutes. He believed he was answering each question truthfully and honestly. Likewise the September 2000 Form F-3 was filled out in about 15 to 20 minutes at the Police Department. He also filled that form out believing he was being truthful and without any intention to deceive. He knew the agency would verify the form and he wanted to be as accurate as possible.

23. Petitioner is a father and husband who currently supports his family. In order to support his family, Petitioner works with both the Northampton Sheriff's Office and the Garysburg Police Department. He has been promoted several times in the Northampton Sheriff's Office and has received a promotion in the Garysburg Police Department.

24. Sheriff Wardie Vincent of the Northampton Sheriffs' Office and Chief of Police Raymond Vaughn of the Garysburg Police Department each testified regarding Petitioner's law enforcement accomplishments. Both witnesses testified that Petitioner is a good law enforcement officer who works well with others and is well regarded in the community. Petitioner has given approximately 17 years of service to the community as a law enforcement officer. Petitioner's certification has never been suspended or revoked by either the North Carolina Sheriffs' Education and Training Standards Commission or the North Carolina Criminal Justice Education and Training Standards Commission. Both Sheriff Vincent and Chief Vaughn stated they valued Petitioner as a law enforcement officer, and wanted to continue to employ Petitioner. Sheriff Vincent stated that Petitioner is a very good supervisor and has a reputation in the community for honesty and trustworthiness. Chief Vaughn agreed and further found Petitioner to be very professional and a man of outstanding ethics.

25. Major Milton Drew, the Jail Administrator for the Northampton Sheriff's Office stated he had known Petitioner for approximately 18 years. He found Petitioner to be a very good officer who was a very truthful person. Major Drew stated that in his experience with Question 47 of the Personal History Statement, he has seen quite a few other persons be confused by the question. He stated Northampton Sheriff's Office personnel now sit down with applicants and go back over the questions, often giving specific instructions.

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. Pursuant to 12 NCAC 10B .0204(c), the North Carolina Sheriffs' Education and Training Standards Commission may revoke, deny, or suspend the certification of a justice officer when the Commission finds that the applicant for certification or certified justice officer: (1) has knowingly made a material misrepresentation of any information required for certification or accreditation from the Sheriffs' Commission or the North Carolina Criminal Justice Education and Training Standards Commission; or (2) has knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, obtained or attempted to obtain credit, training or certification from the Sheriffs' Commission or the North Carolina Criminal Justice Education and Training Standards Commission.

3. Under Administrative Code rules, revocation, denial or suspension of certification of a justice officer may be entered when the applicant for certification has "*knowingly made a material misrepresentation*" or has "*knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation, or cheating,*" attempted to obtain certification from the Commission. (emphasis added)

4. Whether a Petitioner has engaged in knowingly making a misrepresentation or knowingly and designedly by fraud or misrepresentation attempted to obtain certification may be gathered from the facts of the case as applied to the standards of law that speak to the specific issues. Knowingly means with knowledge; consciously; intelligently; willfully; intentionally and is equivalent to an averment that one knew what he or she was about to do, and, with such knowledge, proceeded to do the act alleged. Black's Law Dictionary 784 (5th ed. 1979).

5. The essential elements of fraud are: (1) false representation or concealment of a material fact, (2) reasonably calculated to deceive, (3) *made with intent to deceive*, (4) which does in fact deceive, (5) resulting in damage to the injured party. See *C.F.R. Foods, Inc. v. Randolph Development Co.*, 107 N.C.App. 584, 421 S.E.2d 386 (1992) *Bolton Corp. v. T.A. Loving Co.*, 94 N.C.App. 392, 380 S.E.2d 796 (1989), citing *Myers & Chapman, Inc. v. Thomas G. Evans, Inc.*, 323 N.C. 559, 374 S.E.2d 385 (1988) and *Terry v. Terry*, 302 N.C. 77, 273 S.E.2d 674 (1981) citing *Ragsdale v. Kennedy*, 286 N.C.130, 209 S.E.2d 494 (1974); accord *Cofield v. Griffin*, 238 N.C. 377, 78 S.E.2d 131 (1953). As distinguished from negligence, it is always a *positive, intentional perversion of truth*. (emphasis added)

6. Our Supreme Court has held that, in fraud claims, subsequent acts and conduct are competent on the issue of original intent and purpose. Rowan County Bd. Of Educ. v. U.S. Gypsum Co., 103 N.C.App. 288, 407 S.E.2d 860 (1991) quoting Rush (Cross) v. Beckwith 293 N.C. 224, 238 S.E.2d 130 (1977) quoting Early v. Eley, 243 N.C. 695, 91 S.E.2d 919 (1956).

7. As evidenced by all matters presented during the hearing and in review of the submitted proposals, the parties agree, and the Undersigned concludes that the Petitioner did not make a material misrepresentation of information required on the 1995 Form F-3 Petitioner completed in furtherance of his application through the Northampton Sheriff's Office. Further, the Petitioner did not knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation or cheating, obtain or attempt to obtain certification through the North Carolina Sheriffs' Education and Training Standards Commission when Petitioner answered "No" to Question 47 on the 1995 Form F-3. Moreover, with respect to Petitioner's submission of the 2000 Form F-3, Petitioner did not knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation or cheating, obtain or attempt to obtain certification through the Criminal Justice Education and Training Standards Commission when Petitioner answered "No" on the 2000 Form F-3.

8. Turning lastly and again to the Petitioner's submission of the 2000 Form F-3, the evidence in this case, leads the Undersigned to conclude that the Petitioner did not knowingly (consciously; intelligently; willfully; intentionally) make a material misrepresentation by checking "No" to Question 47 in the 2000 application. Two factors are critical in this conclusion. One is an examination of the circumstances that led to Petitioner's being issued a citation that was found to be without probable cause and promptly dismissed; and second is Petitioner's demeanor and testimony regarding his intent in filling out and his subsequent checking of "No" to Question 47.

9. As the Respondent seeks revocation of Petitioner's certification, Respondent has the burden of proof as to its claims against Petitioner. The responsible party for the burden of proof must carry that burden by a greater weight or preponderance of the evidence. Black's Law Dictionary cites that "preponderance means something more than weight; it denotes a superiority of weight, or outweighing." The party with this burden of persuasion must provide proof to convince the trier of fact that the alleged state of facts is true. If evidence is evenly balanced, the party with the burden of persuasion loses. Maher Terminals, Inc., 512 U.S. at ----, 114 S.Ct. at 2255; Flav-O-Rich, Inc. v. Rawson Food Serv., Inc. (In re Rawson Food Serv., Inc.), 846 F.2d 1343, 1348 (11th Cir.1988) (If evidence is in equipoise, the one with the burden of proof loses.).

10. Pursuant to 12 NCAC 10B .0205(2): "The Commission may either reduce or suspend the periods of sanction under this Item or substitute a period of probation in lieu of revocation, suspension or denial following an administrative hearing. This authority to reduce or suspend the period of sanction may be utilized by the Commission when extenuating circumstances brought out at the administrative hearing warrant such a reduction or suspension."

11. “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 Conclusions of Law the Undersigned makes the following:

PROPOSAL FOR DECISION

The following Proposal for Decision is fact specific to this case and to this Petitioner.

The Undersigned finds and holds that there is sufficient evidence in the record to properly and lawfully support the Conclusions of Law cited above. The weight of the evidence in this matter sustains a finding that the Petitioner did not knowingly make a material misrepresentation or knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation or cheating obtain or attempt to obtain credit, training or certification from the North Carolina Sheriffs’ Education and Training Standards Commission or the North Carolina Criminal Justice Education and Training Standards Commission.

Based on all the evidence, including testimony and exhibits provided at the above-captioned case, and the applicable law, the Undersigned recommends that Petitioner’s justice officer certification not be revoked.

Should the Commission reject the above proposal, the Undersigned proposes that the Commission exercise its equitable discretion and suspend or greatly reduce any period of sanction and refrain from revoking Petitioner’s justice officer certification. Extenuating circumstances, as set forth in the record, were brought out at the administrative hearing that warrants such action. The totality of all information presented at this hearing lead to the conclusion that the Petitioner is that type of individual suited for and a credit to the law enforcement community.

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 Sheriffs' 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 addressed 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 the 7th day of May, 2013.

Augustus B. Elkins II
Administrative Law Judge