

STATE OF NORTH CAROLINA
COUNTY OF CABARRUS

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12DOJ05143

Graham Avon Hager,)	
Petitioner,)	
v.)	DECISION
NC Sheriffs' Education and Training Standards)	
Commission,)	
Respondent.)	

On November 15, 2012, Administrative Law Judge Selina M. Brooks heard this case in Charlotte, North Carolina. The case was heard after respondent requested, pursuant to N.C.G.S. § 150B-40(e), the designation of an administrative law judge to preside at the hearing of this contested case under Article 3A, Chapter 150B of the North Carolina General Statutes.

APPEARANCES

Petitioner: *Pro Se*

Respondent: Matthew L. Boyatt, Assistant Attorney General

ISSUE

Is Respondent's proposed revocation of Petitioner's Justice Officer Certification for the commission of the Class B misdemeanor offense of hit and run resulting in property damage supported by substantial evidence?

FINDINGS OF FACT

1. Petitioner applied through the North Carolina Sheriffs' Education and Training Standards Commission to be certified as a Deputy Sheriff with the Mecklenburg County Sheriff's Office. Petitioner was sworn as a Deputy Sheriff through the Mecklenburg County Sheriff's Office on December 23, 1992, and Petitioner obtained his general certification through the North Carolina Sheriffs' Education and Training Standards Commission on December 23, 1993.

2. On January 4, 2011, Petitioner was involved in a hit and run collision. Petitioner backed his patrol vehicle into a covered motorcycle at 3011 Timber Hollow Road, thereby knocking the motorcycle to the ground. Petitioner left the scene of that collision without notifying the owner of the vehicle. Petitioner also failed to notify his chain of command about the collision with the motorcycle. Captain McGee stated Petitioner caused approximately \$700.00 in damage to the motorcycle.

3. As a result of Petitioner's January 4, 2011 hit and run collision involving the parked motorcycle, Petitioner appeared before the Mecklenburg County Sheriff's Office Chain of Command Review Board. That Board determined Petitioner failed to report the motorcycle collision, and sustained the allegation that Petitioner violated General Order 2 with respect to the requirement to reporting collisions. Petitioner was ordered to undergo remedial training and was also issued a written reprimand.

4. Only July 18, 2011, the Petitioner was involved in a reportable collision while operating his county issued patrol vehicle. Petitioner admitted he was the at-fault driver. The Petitioner ran a steady red traffic signal which caused a passenger vehicle to T-bone Petitioner's county assigned patrol vehicle. The collision caused approximately \$3,000.00 damage to the Acura passenger vehicle and also caused significant damage to the front left quarter panel and light assembly of Petitioner's county assigned patrol vehicle.

5. On July 19, 2011, Petitioner was employed by the Mecklenburg County Sheriff's Office and was on duty in a marked patrol vehicle, a loaner patrol vehicle (vehicle 3824). At that time, Petitioner was serving civil process.

6. At approximately 4:00 p.m. on July 19, 2011, Petitioner drove his loaner patrol vehicle into the cul-de-sac located at Hyacinth Court in Charlotte, North Carolina. The Petitioner was unable to turn his vehicle around in the cul-de-sac; therefore, Petitioner decided to back into the driveway of the residence located at 1513 Hyacinth Court, Charlotte, North Carolina 28206.

7. As Petitioner backed into the driveway of the 1513 Hyacinth Court property, Petitioner heard a scraping sound and possibly felt a bump. At that point, Petitioner pulled out of the driveway and stopped his patrol vehicle. The Petitioner looked at the house located at 1513 Hyacinth Court because he knew at that time that he possibly struck the house or a planter located by the front porch of the house. Despite this admission, Petitioner did not get out of the patrol vehicle in order to adequately determine whether he damaged property at 1513 Hyacinth Court. Instead, Petitioner placed his patrol vehicle in drive and left the scene of property damage.

8. A resident living in 1516 Hyacinth Court observed Petitioner hit the front porch of the 1513 Hyacinth Court property, and also observed Petitioner run a stop sign at the end of the cul-de-sac as Petitioner departed the scene of the collision. Petitioner admitted that once away from the area of the 1516 Hyacinth Court property, Petitioner again stopped his patrol vehicle to assess any potential damage to the vehicle. Petitioner made no effort at that time to return to the 1516 Hyacinth Court property to further assess damage or to notify the homeowner.

9. Further, Petitioner made no effort to notify his chain of command following the July 19, 2011 collision. Rather, Petitioner's supervisors made contact with Petitioner at his residence following his shift once it was determined that Petitioner had been involved in another collision.

10. The Petitioner caused substantial damage to the front porch of the residence

located at 1513 Hyacinth Court. The back of Petitioner's patrol vehicle struck a column on the front porch, thereby compromising the stability of the structure. The repair bill for the damaged porch indicates the entire structure had to be jacked up and an entire column had to be replaced. Petitioner caused \$1,084.35 in damage to the 1513 Hyacinth Court property. Petitioner knew he struck the house at the time Petitioner backed his patrol vehicle up the driveway. Petitioner's failure to stop and notify the homeowner, in addition to his departing the scene of the collision constitutes a hit and run resulting in property damage within the meaning of North Carolina General Statute § 20-166 (c) (1).

11. Captain McGee with the Mecklenburg County Sheriff's Office conducted the internal affairs investigation relating to the July 19, 2011 collision. Petitioner was dismissed for cause due to this hit and run collision. In addition, Petitioner had a history of this type of unlawful behavior.

12. At the time Petitioner struck the front porch of the house located at 1513 Hyacinth Court on July 19, 2011, Petitioner was well aware of his duty to stop and remain at the scene of a collision resulting in property damage.

CONCLUSIONS OF LAW

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper. Both parties received Notice of Hearing, and the Petitioner received the Notification of Probable Cause to Revoke Justice Officer Certification letter mailed by the Respondent on April 4, 2012.

2. The North Carolina Sheriffs' Education and Training Standards 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 revoke, suspend, or deny such certification.

3. Pursuant to 12 NCAC 10B .0204(d)(1), the Commission may revoke, suspend, or deny the certification of a justice officer when the Commission finds that the certified officer has committed or been convicted of:

- (1) a crime or unlawful act defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor and which occurred after the date of appointment.

4. The offense of misdemeanor hit and run resulting in property damage in violation of North Carolina General Statute § 20-166 (c) (1) constitutes a Class B Misdemeanor pursuant to the Class B Misdemeanor Manual and the Commission's Rules.

5. Pursuant to 12 NCAC 10B .0103(10)(b)(i), a Class B Misdemeanor is defined in pertinent part as:

- (i) an act committed or omitted in violation of any common law, criminal statute, or criminal traffic code of this state which is classified as a Class B Misdemeanor as set forth in the "Class B Misdemeanor Manual" as published by the North Carolina Department of Justice and shall automatically include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6.

6. Pursuant to N.C.G.S. § 20-166 (c) (1), 12 NCAC 10B .0103(10)(b) and the Class B Misdemeanor Manual adopted by the Respondent, the crime of misdemeanor hit and run resulting in property damage in violation of North Carolina General Statute § 20-166 (c) (1) constitutes a Class B misdemeanor.

7. Petitioner's failure to stop and remain at the scene of the July 19, 2011 collision resulting in property damage constitutes the commission of misdemeanor hit and run in violation of North Carolina General Statute § 20-166 (c) (1) and 12 NCAC 10B .0204(d)(1).

8. The Respondent's proposed revocation of the Petitioner's certification is supported by substantial evidence.

PROPOSAL FOR DECISION

Based on the foregoing Findings of Fact and Conclusions of Law and pursuant to 12 NCAC 10B .0205 (2), the undersigned recommends Respondent revoke the Petitioner's Justice Officer Certification for a period not less than five (5) years based on Petitioner's commission of the Class B misdemeanor offense of hit and run resulting in property damage.

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.

This the 19th day of December, 2012.

Selina M. Brooks
ADMINISTRATIVE LAW JUDGE