

STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12DOJ08010

<p>WILLIAM FRANKLIN DIETZ, Petitioner,</p> <p>v.</p> <p>NORTH CAROLINA CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION, Respondent.</p>	<p>PROPOSAL FOR DECISION</p>
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This case came on for hearing on December 13, 2012, before Administrative Law Judge Beecher R. Gray in Bolivia, North Carolina. This case was heard after Respondent requested, under 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.

APPEARANCES

Petitioner: William Franklin Dietz, Jr., appearing *pro se*
511 Charlestown Street
Southport, North Carolina 28461

Respondent: Lauren D. Tally, Assistant Attorney General
Department of Justice
Law Enforcement Liaison Section
P.O. Box 629
Raleigh, N.C. 27602-0629

ISSUES

Whether Respondent's proposed denial of Petitioner's law enforcement officer certification, based upon Petitioner's knowingly making material misrepresentations of any information required for certification, is supported by a preponderance of the evidence.

Whether Respondent's proposed denial of Petitioner's law enforcement officer certification, based upon Petitioner's commission of the felonies "Possession of a Weapon of Mass Destruction" and "Malicious Use of Explosive or Incendiary," is 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.

FINDINGS OF FACT

1. The parties received Notice of Hearing by certified mail more than 15 days prior to the hearing and each stipulated on the record that notice was proper. Petitioner received the notification of Probable Cause to Deny Law Enforcement Officer Certification through a letter mailed by Respondent on June 21, 2012.
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 knowingly has 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 not be less than five years; however, the Commission either may 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. 12 NCAC 09A.0204(b)(2) 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 fails to meet or maintain one or more of the minimum employment standards required by 12 NCAC 09B.0100.
6. 12 NCAC 09B.0111(1)(a) requires that every law enforcement officer employed by an agency in North Carolina shall not have committed or been convicted of a felony.
7. 12 NCAC 09A.0205(c)(2) provides the period of sanction shall be indefinite where the cause of sanction is failure to meet or maintain minimum standards of employment.
8. Petitioner requested an administrative hearing after receiving a Probable Cause

Committee's decision to deny his Law Enforcement Officer Certification.

9. Petitioner originally was awarded certification from the North Carolina Criminal Justice Education and Training Standards Commission on June 22, 2010, as a full-time law enforcement officer with the Pinnacle Special Police. He separated from this position on November 17, 2010. Respondent received another request for certification for Petitioner from Pinnacle Special Police on February 7, 2011. (R. Exs. 2 & 4) Petitioner is currently seeking certification as a part-time law enforcement officer with the Pinnacle Special Police.
10. Any time a previously-certified law enforcement officer is seeking recertification, Respondent compares the current forms submitted with all previous forms provided by Petitioner to make sure there are no inconsistencies. During the comparison, conducted by Respondent's Investigator Richard Squires, many misrepresentations were identified. Investigator Squires compiled a memorandum showing each misrepresentation and presented it to the probable cause committee. (R. Ex. 1)
11. Petitioner listed a prior felony charge of "Possess Weapon of Mass Destruction" on his F-5A Report of Appointment/Application for Certification for Pinnacle Special Police. (R. Ex.4) Investigator Squires conducted an investigation into the facts and circumstances surrounding Petitioner being charged with that criminal offense.

COMMISSION OF FELONY OFFENSES

12. Investigator Squires began his investigation into Petitioner's commission of a felony by reviewing Petitioner's company police certification file which contained a document wherein Petitioner explained the circumstances surrounding his being charged with "Possession of a Weapon of Mass Destruction," "Carrying a Concealed Weapon," and "Injury to Real Property."

In that statement, Petitioner wrote the following:

For the events that occurred on 4/23/92, I was charged with injury to personal property, carrying a concealed weapon, and possession of weapon of mass destruction. The concealed weapon was a .38 special that belonged to Chris Gilbert and that it was in my car under some paper. The weapon of mass destruction was a single shot sawed off shotgun which belonged to James Brill and a small jar of napalm made by Chris Gilbert that was found in my car. I left Chris and Jim and was not present when they shot up the vehicle, but I had to pay for it.

(R. Ex. 12)

13. Included with Petitioner's F-5A Report of Appointment form, was another statement from Petitioner explaining the events surrounding these charges. In this statement, Petitioner admits that:

I was a stupid 17 Year old that got in the wrong two kids. I will address the destruction of private property first. There was a truck that appeared to be

abandon at a location in Southport, NC known as Pebble Beach on the Cape Fear River. Chris Gilbert and Jim Brill seemed to think it would be good to shoot it up and they did. The weapons of mass destruction involved a sawed off shotgun that belonged to Jill Brill and a glass cookie jar that contained napalm. The jar of napalm was made by Chris Gilbert and I taught Chris how to make it. I learned how from the Anarchist's Cookbook. The sawed off shot gun and the jar of napalm was found in my car...While I was in custody at the Brunswick County Sheriff's Department I told them in a bragging way "we shot up the truck."

(R. Ex. 8)

14. Petitioner admitted shooting up the truck and making napalm during his polygraph with Special Agent K. A. Oaks at the N.C.S.B.I. on January 18, 2011. Petitioner further admitted that he and his friends also detonated a napalm bomb that he had made. He used gasoline and laundry soap to make a pipe bomb from a handbook called The Anarchist's Cookbook. The pipe bomb was used to blow up the truck, but it did not do a lot of damage, and he didn't think the officers ever knew about the bomb. (R. Ex. 11)
15. Petitioner testified at the hearing. He admitted to making napalm with Chris Gilbert, but refused to take responsibility for shooting the truck or making the pipe bomb. When confronted with his statement to Special Agent K. A. Oaks during the polygraph, Petitioner claimed the Agent did not correctly record his statement. Petitioner had no answer when asked why his own statements sent to Respondent, referenced above, admit responsibility. During Petitioner's testimony, he did admit to being on the beach with Brill and Gilbert on April 23, 1992 and that the three (3) of them were shooting seagulls with shotguns.
16. Petitioner presented no other evidence regarding the commission of the two (2) felony offenses. Jim Brill and Chris Gilbert did not testify at the hearing.

MATERIAL MISREPRESENTATIONS

17. The **first** material misrepresentation occurred on January 21, 2009, when Petitioner submitted a Form F-3 BLET Personal History Statement to Brunswick Community College. Question #26 on Petitioner's Form F-3 stated "If you have ever been discharged or requested to resign from any position because of criminal or personal misconduct or rules violations, give details. Petitioner left this question blank. (R. Ex. 13)
18. Evidence showed that Petitioner was fired from Burns Security for being late to work. During Petitioner's polygraph pre-test, he also admitted to being fired from Brunswick Plumbing in 2003 for scratching a tub. While being interviewed by Marvin Clark, Petitioner admitted that he was fired from Mike Hoffman's plumbing for "calling Mike a crackhead." Petitioner did not list any of these three (3) firings on the Brunswick Community College BLET Personal History Statement. (R. Exs. 11 & 12)
19. The **second** material misrepresentation occurred on May 20, 2010, when Petitioner submitted a Form F-3 Personal History Statement at Pinnacle Special Police. Question #26 on Petitioner's Form F-3 stated "If you have ever been discharged or requested to resign from any position because of criminal or personal misconduct or rules violations,

give details.” Petitioner listed “Burns Security tardy police violation.” (R. Ex. 15)

20. Evidence showed that Petitioner admitted to being fired from Brunswick Plumbing in 2003 for scratching a tub during his polygraph pre-test. While being interviewed by Marvin Clark, Petitioner admitted he was fired from Mike Hoffman’s plumbing for calling Mike a crackhead. Petitioner did not list any of these two (2) firings on the Brunswick Community College BLET Personal History Statement. (R. Exs. 11 & 12)
21. The **third** material misrepresentation occurred on January 21, 2009, when Petitioner submitted the Form F-3 BLET Personal History Statement to Brunswick Community College. Question #31 of the form, asks Petitioner to “List all jobs you have held in the last ten years”. Petitioner listed that he had been employed by Mike Hoffman in May 2003. Petitioner did not provide a date he left this employment and for the reason Petitioner left Mike Hoffman’s employment, Petitioner wrote AKAL, which is his next employer listed. (R. Ex. 13)
22. Evidence showed that Petitioner was interviewed by Marvin Clark where he admitted he was fired from Mike Hoffman’s plumbing for calling Mike a crackhead. Petitioner admitted during his polygraph that he quit his employment with Mike Hoffman because the two got into a disagreement where he called Mike a crackhead and Mike threatened to hit him with a hammer. Neither of these reasons for leaving were documented on Petitioner’s BLET F-3 submitted to Brunswick Community College. (R. Ex. 11)
23. The **fourth** material misrepresentation occurred on January 21, 2009, when Petitioner submitted the Form F-3 BLET Personal History Statement to Brunswick County Community College. Question #31 of the form, asks Petitioner to “List all jobs you have held in the last ten years.” Petitioner listed being employed by Dave Melton, but left the dates of employment blank. Petitioner claimed that he ran out of work as his reason for leaving. (R. Ex. 13)
24. Evidence at the hearing showed that Petitioner admitted to being fired by Dave Melton with Brunswick Plumbing in 2003 for scratching a tub during his polygraph pre-test. This reason for leaving employment was not listed on Petitioner’s F-3 with Pinnacle Special Police. (R. Ex. 11)
25. The **fifth** and **sixth** material misrepresentations occurred on May 20, 2010 when Petitioner submitted the Form F-3 Personal History Statement to Pinnacle Special Police. Question #31 of the form, asks Petitioner to “List all jobs you have held in the last ten years.” Petitioner listed that he had been employed by Mike Hoffman from April 2003 to December 2003, leaving that employment for AKAL, which is his next employer listed. Petitioner also listed being employed by Dave Melton, but left the dates of employment blank. Petitioner claimed he ran out of work as his reason for leaving. (R. Ex. 15)
26. Evidence at the hearing showed the same as above. Petitioner was interviewed by Marvin Clark where he admitted he was fired from Mike Hoffman’s plumbing for calling Mike a crackhead. Petitioner admitted to being fired by Dave Melton with Brunswick Plumbing in 2003 for scratching a tub during his polygraph pre-test. These reasons for leaving

employment were not listed on Petitioner's F-3 with Pinnacle Special Police. (R. Exs. 11 and 12)

27. The **seventh** material misrepresentation occurred on January 21, 2009, when Petitioner submitted the Form F-3 BLET Personal History Statement to Brunswick County Community College. Question #44 asks "Have you ever used marijuana?" Petitioner answered "Yes/High School/Last Time: High School." (R. Ex. 13)
28. Evidence at the hearing showed that during Petitioner's polygraph pre-test interview, he admitted to using marijuana at least fifty (50) times. He stated he first tried marijuana around the age of 26 and the last time he used it was around 2002 with his second wife. Petitioner failed to disclose this information. (R. Ex. 11)
29. The **eighth** material misrepresentation occurred on May 20, 2010, when Petitioner submitted the Form F-3 Personal History Statement to Pinnacle Special Police. Question #44 asks "Have you ever used marijuana?" Petitioner answered "Yes/High School-Experimentation/Last time 1993." (R. Ex. 15)
30. Evidence at the hearing showed that during Petitioner's polygraph pre-test interview, he admitted to using marijuana at least fifty (50) times. He stated he first tried marijuana around the age of 26 and the last time he used it was around 2002 with his second wife. Petitioner failed to disclose this information. (R. Ex. 11)
31. The **ninth** material misrepresentation occurred on January 21, 2009, when Petitioner submitted the Form F-3 BLET Personal History Statement to Brunswick County Community College. Question #46 asks "Have you ever used prescription drugs other than under the supervision of, or as prescribed by, a physician?" Petitioner answered "No." (R. Ex. 13)
32. Evidence at the hearing showed that during Petitioner's polygraph pre-test interview, Petitioner admitted that he had taken one of his wife's morphine lollipops for a bad headache in 2002. He did not have a prescription for the medication. Petitioner failed to disclose this information. (R. Ex. 11)
33. The **tenth** material misrepresentation occurred on May 20, 2010, when Petitioner submitted the Form F-3 Personal History Statement to Pinnacle Special Police. Question #46 asks "Have you ever used prescription drugs other than under the supervision of, or as prescribed by, a physician?" Petitioner answered "No." (R. Ex. 15)
34. Evidence at the hearing showed that during Petitioner's polygraph pre-test interview, Petitioner admitted that he had taken one of his wife's morphine lollipops for a bad headache in 2002. He did not have a prescription for the medication. Petitioner failed to disclose this information. (R. Ex. 11)
35. The **eleventh** material misrepresentation occurred on January 21, 2009 when Petitioner submitted the Form F-3 BLET Personal History Statement to Brunswick County Community College. Question #47 asks "Have you ever been arrested by a law

enforcement officer or otherwise charged with a criminal offense?” Petitioner listed charges of “Domestic Violence,” “Possession of Weapon of Mass Destruction” and “Destruction of Private Property.” (R. Ex. 13)

36. The evidence at the hearing showed that Petitioner failed to disclose the charges of “Motorboat without Lifesaving Device” and “Carrying a Concealed Weapon.” Petitioner claimed his failure to list these two (2) charges was an oversight.
37. The **twelfth** material misrepresentation occurred on May 20, 2010, when Petitioner submitted the Form F-3 Personal History Statement to Pinnacle Special Police. Question #47 asks “Have you ever been arrested by a law enforcement officer or otherwise charged with a criminal offense?” Petitioner listed charges of “Weapon of Mass Destruction,” “Destruction of Private Property,” “Concealed Weapon,” and “Reckless Driving to Endanger.” (R. Ex. 15)
38. The evidence at the hearing showed Petitioner failed to disclose his charge of “Motorboat without Lifesaving Device.” When questioned, Petitioner claimed his failure to list this charge was an oversight.
39. The **thirteenth** material misrepresentation occurred on October 29, 2010, when Petitioner submitted the Form F-8 Mandated Background to Pinnacle Special Police. Question #59 asks “Have you ever used prescription drugs other than under the supervision of or as prescribed by a physician?” Petitioner answered “No.” (R. Ex. 16)
40. Evidence at the hearing showed that during Petitioner’s polygraph pre-test interview on February 1, 2011, Petitioner admitted that he had taken one of his wife’s morphine lollipops for a bad headache in 2002. He did not have a prescription for the medication. Petitioner failed to disclose this information. (R. Ex. 11)
41. Petitioner signed both of his Personal History Statements listed above underneath the statement 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.” (R. Exs. 13 & 15)
42. Petitioner testified at the hearing that all the misrepresentations were an oversight. He refused to admit his extensive use of marijuana or give the date of his last use. Petitioner was evasive about his prior employment and terminations. He provided no evidence other than his own testimony.

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. “Possession of a Weapon of Mass Destruction” in violation of N.C.G.S. § 14-288.8 is a class F felony. A person is guilty of “Possession of a Weapon of Mass Destruction” if that person:
 - 1) Manufactures, assembles, possesses, stores, transports, sells, offers to sell, purchases, offers to purchase, delivers, gives to another, or acquires:
 - a) any explosive or incendiary, including a bomb, grenade or . . .
 - d) any shotgun with a barrel length of less than 18 inches or an overall length of less than 26 inches . . .
3. “Malicious Use of Explosive or Incendiary” in violation of N.C.G.S. § 14-49 is a class G felony. A person is guilty of “Malicious Use of Explosive or Incendiary” if that person:
 - 1) willfully and maliciously
 - 2) damages
 - 3) real or personal property belonging to another
 - 4) by use of an explosive or incendiary device or material.
4. A preponderance of the evidence exists to support the conclusion that Petitioner committed the felony offense of “Possession of a Weapon of Mass Destruction” on April 23, 1992, in Brunswick County when he possessed a single shot sawed off shotgun and a jar of napalm.
5. A preponderance of the evidence exists to support the conclusion that Petitioner committed the felony offense of “Malicious Use of Explosive or Incendiary” on April 23, 1992, in Brunswick County when he made and detonated a napalm bomb under a truck on the beach.
6. A preponderance of the evidence exists to support the conclusion that Petitioner knowingly made repeated material misrepresentations when he submitted two inaccurate F-3 Personal History Statements and one inaccurate F-8 Background Investigation form to North Carolina law enforcement agencies. The record of investigation presented by Investigator Squires and the F-3 and F-8 forms at issue demonstrate that Petitioner falsely misrepresented his prior employment, reasons for termination from those employments, criminal charges, and marijuana use. Petitioner’s claim that misrepresentations simply were oversights lacks credibility. All substantive evidence in this case suggests that Petitioner knowingly misrepresented the history of his previous employments, his prior criminal charges, and prior marijuana use in order to gain employment opportunities.
7. The findings of Respondent’s Probable Cause Committee are supported by substantial evidence.
8. The party with the burden of proof in a contested case must establish the facts required by G.S. § 150B-23(a) by a preponderance of the evidence. N.C. Gen. Stat. § 150B-29(a).

The administrative law judge shall decide the case based upon the preponderance of the evidence. N.C. Gen. Stat. § 150B-34(a).

9. Petitioner has the burden of proof in the case at bar. Petitioner has failed to show by a preponderance of the evidence that Respondent's proposed suspension of Petitioner's law enforcement officer certification is not supported by substantial evidence.

PROPOSAL FOR DECISION

NOW, THEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, the Undersigned finds that the evidence supports a decision by Respondent that it deny Petitioner's law enforcement officer certification for a period of not less than five (5) years based upon Petitioner's multiple material misrepresentations of information required for certification.

The Undersigned also finds that the evidence supports a decision by Respondent that it deny Petitioner's law enforcement officer certification indefinitely based upon his commission of two (2) felony offenses to wit; "Possession of a Weapon of Mass Destruction" in violation of N.C.G.S. § 14-288.8 and "Malicious Use of Explosive or Incendiary" in violation of N.C.G.S. § 14-49 .

NOTICE AND ORDER

The North Carolina Criminal Justice Education and Training Standards Commission is the agency that will make the Final Decision in this contested case. As the final decision-maker, that agency 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 pursuant to N.C. Gen. Stat. § 150B-40(e).

It hereby is ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714.

This the 19th day of June, 2013.

Beecher R. Gray
Administrative Law Judge

