

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

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IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
12 DOJ 10200

BILAL ABDUS-SALAAM, )  
Petitioner, )  
 )  
v. )  
 )  
N.C. CRIMINAL JUSTICE )  
EDUCATION AND TRAINING )  
STANDARDS COMMISSION, )  
Respondent. )

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**PROPOSAL FOR DECISION**

**THE ABOVE-ENTITLED MATTER** was heard before the undersigned Augustus B. Elkins II, Administrative Law Judge, on April 26, 2012 in Raleigh, 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 filed materials with the Clerk's Office on May 31, 2013. Respondent filed proposals with the Clerk's Office on July 5, 2013 at which time the record was closed.

**APPEARANCES**

**For Petitioner:** Bo Caudill  
Caudill Law, PLLC

Note: Due to Mr. Caudill's relocation to New York, an Order granting withdrawal was signed on July 30, 2013.

Bilal Abdus-Salaam  
706 Virginia Avenue  
Raleigh, North Carolina 27604

**For Respondent:** Lauren Tally Earnhardt, Assistant Attorney General  
N.C. Department of Justice  
9001 Mail Service Center  
Raleigh, North Carolina 27699-9001

## **ISSUES**

Is Respondent's proposed denial of Petitioner's certification as a correctional officer based upon Petitioner's knowingly making material misrepresentations of any information required for certification, supported by a preponderance of the evidence?

Is Respondent's proposed denial of Petitioner's certification as a correctional officer based upon Petitioner's lack of good moral character, supported by a preponderance of the evidence?

## **RULES AT ISSUE**

12 NCAC 09G.0206  
12 NCAC 09G.0504(b)  
12 NCAC 09G.0505(b) and (c)

## **EXHIBITS**

Petitioner's Exhibit 1 was introduced and admitted.

Respondent's Exhibits 1-4 were introduced and admitted.

**BASED UPON** careful consideration of the witnesses' sworn testimony, the exhibits, and the entire record of this proceeding, the undersigned Administrative Law Judge makes the following Findings of Fact by a preponderance of the evidence. In making the 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 the undersigned Administrative Law Judge, in that jurisdiction and venue are proper and both parties received a timely Notice of Hearing.
2. On August 30, 2012, Respondent mailed a letter to Petitioner wherein Respondent proposed to deny Petitioner's application for certification as a corrections officer on two grounds:
  - a. First, because Petitioner made a materially false statement on his Form F-5A, application for certification as a corrections officer, where he failed to disclose that

he had previously been employed by and terminated from the Durham Police Department (“DPD”) (R’s Ex. 4); and

- b. Second, because Petitioner failed to meet or maintain one of the standards for corrections employment appearing in 12 NCAC 09G.0200 where Petitioner failed to disclose on his application with the DPD that he had a New Jersey driver’s license, that his New Jersey driving record included citations for multiple moving violations, and that he had paid fines in amounts greater than \$50.00.
3. Petitioner is a 30-year-old North Carolina resident. He moved to this State in 2008. Prior to that year, he lived in New Jersey.
  4. 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 9G, to certify correctional officers and to revoke, suspend, or deny such certification.
  5. 12 NCAC 09G.0504(b)(6) provides that the Commission may suspend, revoke, or deny the certification of a correctional 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.
  6. 12 NCAC 09G .0206 provides that every person employed as a correctional officer...by the North Carolina Department of Correction shall demonstrate good moral character as evidenced by, but not limited to: (5) being truthful in providing all required information as prescribed by the application process.
  7. Petitioner applied for certification as a full time correctional officer with the North Carolina Department of Corrections in 2011.
  8. The North Carolina Department of Corrections submitted to Respondent a Report of Appointment/Application for Certification, Form F-5A(DOC), which was signed by Petitioner on November 30, 2011.
  9. On the Form F-5A(DOC), Petitioner indicated on Question Number 1(c) he had never been denied employment with a criminal justice agency.
  10. On the Form F-5A(DOC) above the Petitioner's signature is the following statement:

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 the 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 or portion

of such information can be the sole basis for termination of my employment and/or denial, suspension or revocation of my certification at 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 or 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 my Personal History Statement and as reflected in this application.

11. Upon receipt of the Form F-5A (DOC), Ed Zapolsky, an investigator with the North Carolina Criminal Justice Standards Division, looked at Petitioner's complete officer history print out from the computer database which holds Criminal Justice Standards Division information. The print out showed Petitioner previously held probationary law enforcement certification with the Durham Police Department Division from December 30, 2009 to February 2, 2010.

12. The Durham Police Department ("DPD") hired Petitioner following his application and apparently successful completion of the pre-employment screening process. That process required Petitioner to undergo, *inter alia*, physical and psychological testing and a polygraph examination. Petitioner took the position of police recruit. That position required Petitioner to attend training exercises and classes at the police academy. Petitioner never graduated from the academy, but completed the coursework and examinations necessary to do so. (P's Ex. 1).

13. Petitioner's failure to graduate from the academy derived from the events of February 1, 2010. That day, Petitioner left the academy classroom to find his vehicle missing from the DPD parking lot. The vehicle contained Petitioner's service weapon and other equipment. Petitioner reported the vehicle missing to his superior officers, including Lieutenant R.W. McLaughlin, Jr. Petitioner did not tell his superior officers that the vehicle had definitely been stolen; rather, he reported that he believed his vehicle stolen based on the information available to him at the time.

14. Mr. Zapolsky learned Petitioner was terminated from the Durham Police Academy BLET program for being untruthful following this incident where his car was towed from the Durham Police Headquarter parking lot. Petitioner was asked by superior officers whether his car could have been borrowed by a friend, or repossessed. Petitioner denied allowing anyone to use his car and maintained that he had paid all payments on the vehicle. The car was entered stolen and a police report was generated. Upon investigation, it was determined that Petitioner's car had been repossessed because he had not been making regular payments.

15. The DPD also discovered the existence of Petitioner's New Jersey driving record. Due to the inconsistencies in Petitioner's application responses and his missing vehicle report, the Durham Police Department terminated Petitioner on February 2, 2010. Lieutenant McLaughlin testified that, other than with respect to the missing vehicle, he had never experienced any problems with Petitioner.

16. When questioned by Respondent's staff about his termination from Durham Police

Department, Petitioner claimed “In 2010 there was a hold on my driver’s license because of unpaid parking tickets. This caused me to have a problem receiving my BLET certification with Durham Police Department.” This statement was inaccurate and misleading. In fact, Petitioner was terminated because of his untruthfulness to his superior officers, not because of parking tickets.

17. During the investigation into Petitioners missing vehicle, Durham Police Department received information from the New Jersey Department of Motor Vehicles concerning Petitioner’s driving record which showed numerous citations and suspensions.

18. Respondent’s staff reviewed Petitioners Personal History Statement Form F-3 submitted by Petitioner to Durham Police Department on March 23, 2009. Question 56 asks “Do you possess a driver’s license issued by any state other than North Carolina?” Petitioner answered “No.” Question 57 asks “Was your license ever suspended or revoked? If yes, state which and give reasons:” Petitioner answered “No.” Question 58 asks “Was your license ever restored?” Petitioner wrote “N/A”

19. While in New Jersey, Petitioner obtained a New Jersey driver’s license. His New Jersey driving record shows five periods of license suspension and several moving violations. (R’s Ex. 3). The moving violations include three occasions of operating a motor vehicle during a suspension period. (R’s Ex. 3). Of the five suspension periods, the first two derive from Petitioner’s failure to pay the costs associated with a prior moving violation and the Petitioner’s operation of a vehicle during the period of the first suspension, respectively. The remainder of Petitioner’s suspensions resulted from a failure to pay insurance surcharges. (R. Ex. 3, at 1-3).

20. In a total review of Petitioner’s driving record from New Jersey, the Respondent found that from May 2004 to May 2010 Petitioner was charged with four (4) failures to appear, six (6) driving while license suspended or revoked, eight (8) nonpayment of insurance surcharges, and two (2) failures to comply with a court order. Petitioner’s failure to comply with court orders and license suspensions is of particular concern.

21. At the hearing, Petitioner testified that he did not remember many of his driving charges from New Jersey. He could not give any details for his traffic stops, driver’s license suspensions, or court proceedings, orders and fines. He testified he was unaware his license was revoked or suspended, even though he received six different charges for driving while license suspended. He also claimed he thought Questions 56-58 on the Form F-3 were only referring to North Carolina driving records, even though Question 56 expressly mentions “any state other than North Carolina.”

22. Petitioner’s New Jersey driver’s license expired on February 29, 2008. Petitioner has not driven in New Jersey since 2007. Petitioner has since obtained a valid North Carolina driver’s license.

23. Petitioner used different variations of his name on forms submitted to Respondent. On the Form F-5A(DOC) Petitioner lists his name as Bilal Amin Ramadhan Abdus-Salaam. On the Form F-5A for Durham Police Department, Petitioner listed his full name as Bilal Amin

Abdus-Salaam. On the Form F-3 Personal History Statement to Durham Police Department, Petitioner lists his full name as Bilal Abdus-Salaam.

24. More than a year after Petitioner's dismissal from the Durham Police Department, he applied for a position with Polk Correctional Institute ("PCI"), a facility of the N.C. Department of Corrections. As part of the application process, Petitioner completed a Form F-5A. That Form asked Petitioner, *inter alia*, "Have you ever been denied employment with a criminal justice agency?" (R's Ex. 1, at 5). Petitioner answered, "No." (R's Ex. 1, at 5). Polk hired Petitioner and he began work as a corrections officer immediately. He worked in that capacity for a period of just over one month, fulfilling the entire spectrum of duties associated with that position. He experienced no problems doing so. After the Probable Cause Committee issued its proposed action, Petitioner was restricted to limited duty. He has experienced no problems in limited duty.

25. Based on all information before Respondent, Respondent's Probable Cause Committee found probable cause to believe that Petitioner's application for certification as a correctional officer should be denied for a period of three (3) years. The proposed denial was based upon Petitioner's material misrepresentation of information in completing the F-5A(DOC) on November 30, 2011 as a part of his application for certification with the North Carolina Department of Corrections.

26. Petitioner asserts that he did not misrepresent information that he had, indeed, previously worked for the Durham Police Department, but that the DPD terminated him; it did not deny him employment. Petitioner claims that the phrase "denied employment" does not include a termination from employment; and that the DPD employed Petitioner and later withdrew that employment.

27. Petitioner further asserts that the Form F-5A did not ask Petitioner if he had "ever been denied employment as a law-enforcement officer," but instead asked whether he had been "denied employment with a criminal justice agency."

28. In response to Question Number 1(c) "Have you ever been denied employment with a criminal justice agency?" Petitioner checked the box to indicate "No." In truth and fact, Petitioner failed to disclose that in February of 2010 he was terminated and thus denied employment with the Durham Police Department for his dishonesty.

29. Respondent's Probable Cause Committee found probable cause to believe that Petitioner's application for certification as a correctional officer should be denied indefinitely. The proposed denial was based upon Petitioner's lack of good moral character. The proposed denial was based upon Petitioner's inability to be truthful on Respondent's forms required for certification, specifically the questions where Petitioner failed to disclose the state of his driving history in New Jersey.

30. Petitioner testified that he answered the Form F-3 in the manner he did because he believed that certain of its questions referred only to his North Carolina driving record. Petitioner stated that he regretted the poor driving habits that he exhibited while in New Jersey and that he was

committed to refraining from such conduct in the future. He stated that his experiences in New Jersey taught him to pay closer attention to paperwork, particularly when that paperwork relates to traffic citations.

**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 9G, to certify correctional officers and to revoke, suspend, or deny such certification.

3. Petitioner bears the burden of proof on the issues. Britthaven v. N.C. Dept. of Human Resources, 118 N.C. App. 379, 382, 455 S.E. 2d 455, 461, rev. den., 341 N.C. 418, 461 S.E. 2d 754 (1995). To meet this burden, Petitioner must show that Respondent substantially prejudiced its rights and exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule.

4. In accord with N.C.G.S. § 150B-34, “The administrative law judge shall decide the case based upon the preponderance of the evidence, giving due regard to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency.”

5. Under the controlling North Carolina statutes and rules, and the current case law, Petitioner failed in his burden of proof regarding Respondent’s proposed denial of Petitioner’s certification as a correctional officer based upon Petitioner’s knowingly making material misrepresentations of any information required for certification, supported by a preponderance of the evidence. Petitioner’s evidence does not overcome that of Respondent supporting the conclusion that Petitioner knowingly made a material misrepresentation of information required for correctional officer certification when he completed a F-5A(DOC) Report of Appointment/Application for Certification on November 30, 2011 as a part of his application for certification with the North Carolina Department of Corrections. In response to Question # 1(c) “Have you ever been denied employment with a criminal justice agency?” Petitioner checked the box to indicate “No.” Petitioner failed to disclose that in February of 2010 he was terminated and thus denied employment with the Durham Police Department for his dishonesty.

6. The Respondent may properly deny Petitioner's certification pursuant to 12 NCAC 9G.0504(b)(6) for material misrepresentations. 12 NCAC 09G.0505(b) provides that when the Commission suspends or denies the certification of a correctional officer pursuant to 12 NCAC 09G.0504, the period of sanction shall be not less than three (3) years; however, the Commission may either reduce or suspend the period of sanction under Paragraph (c) 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 or accreditation.

7. Good moral character has been defined as "honesty, fairness, and respect for the rights of others and for the laws of state and nation." See *Daniel Brannon Gray v. N.C. Sheriffs Education and Training Standards Commission*, 09 DOJ 4364 (March 15, 2010 citing *In Re Willis*, 299 N.C. 1, 10 (1975).

8. Under the controlling North Carolina statutes and rules, and the current case law, Petitioner failed in his burden of proof regarding Respondent's proposed denial of Petitioner's certification as a correctional officer based upon Petitioner's lack of good moral character. Petitioner's evidence does not overcome that of Respondent supporting the conclusion that Petitioner lacks good moral character required of correctional officers based on his inability to be truthful on Respondent's forms required for certification.

9. The Respondent may properly deny Petitioner's certification pursuant to 12 NCAC 09G .0505(c)(2) which provides that when the Commission suspends or denies the certification of a corrections officer, the period of sanction shall be for an indefinite period, but continuing so long as the stated deficiency... continues to exist, where the cause of sanction is (2) failure to meet or maintain the minimum standards for certification.

**BASED UPON** the foregoing Findings of Fact and Conclusions of Law the Undersigned makes the following:

### **PROPOSAL FOR DECISION**

The Undersigned finds and holds that there is sufficient evidence in the record to properly and lawfully support the Conclusions of Law cited above.

Based on those conclusions and the facts in this case, the Undersigned holds that the Petitioner has failed to carry his burden of proof by a greater weight of the evidence that Respondent exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule. 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. The weight of Petitioner's evidence does not overbear in that degree required by law the weight of evidence of Respondent and as such the decisions of the Probable Cause Committee of the Criminal Justice Education and Training Standards Commission must be and are hereby affirmed.

**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 16th day of August, 2013.

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Augustus B. Elkins II  
Administrative Law Judge