

STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12DOJ10204

<p>RON ALLEN HEDRINGTON PETITIONER,</p> <p>V.</p> <p>NC CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION RESPONDENT.</p>	<p>PROPOSAL FOR DECISION</p>
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In accordance with North Carolina General Statute § 150B-40(e), Respondent requested the designation of an administrative law judge to preside at an Article 3A, North Carolina General Statute § 150B, contested case hearing of this matter. Based upon the Respondent's request, Administrative Law Judge J. Randall May heard this contested case in High Point, North Carolina on May 31, 2013.

APPEARANCES

Petitioner: Evelyn M. Savage, Attorney at Law
Van Camp, Meachem & Newman, PLLC
Two Regional Circle
Post Office Box 1389
Pinehurst, North Carolina 28370

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

ISSUE

Did Petitioner knowingly make a material misrepresentation of information required for certification?

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 makes the following FINDINGS OF FACT.

In making the FINDINGS OF FACT, the undersigned has weighed all the evidence, or the lack thereof, 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.

RULES AT ISSUE

12 NCAC 09A .0204(b)(6)
12 NCAC 09A .0205(b)(4)

FINDINGS OF FACT

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, both parties received Notice of Hearing, and Petitioner received the notification of Proposed Denial of Law Enforcement Officer Certification through a letter mailed by Respondent on September 6, 2012. (Respondent's Exhibit 34)
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.

North Carolina State Highway Patrol Application

5. On **June 9, 2005**, Petitioner completed a Form F-3 Personal History Statement to be submitted to the Commission for certification as a law enforcement officer with the North Carolina State Highway Patrol. (Respondent's exhibit 2) 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 48 of Petitioner's June 9, 2005 Form F-3 Personal History Statement stated: Have you ever had a Domestic Violence Protective Order issued against you? Include both ex-parte Domestic Violence Protective Orders and those entered subsequent to a hearing. Petitioner answered "No." Petitioner failed to answer this question truthfully because he failed to disclose that on December 31, 2002, an ex parte domestic violence protective order was issued against him and that on March 28, 2002, a temporary restraining order was entered against him. The evidence at the hearing showed the following:

1. On December 31, 2002, the trial court entered an Ex Parte Domestic Violence Protective Order against Petitioner in Cumberland County, North Carolina. (Respondent's exhibit 4)
 - a. On December 31, 2002, Ms. Chavis filed a complaint and motion for domestic violence protective order in Cumberland County, North Carolina. (Respondent's exhibit 4) The complaint alleged that Ms. Chavis and Petitioner were persons of the opposite sex who are in or have been in a dating relationship. The complaint alleged that "A filed police report for following me and my daughter, many calls to the police because he would not allow me to leave my home, unplug my phones, grabbing me and around [sic] my neck and head, twisting my arms, Dec, 24th, Dec 30, on Dec 13th Bruise face." The complaint alleged that "He has started verbally abusing my four year old, by hollering at her and slamming [sic] in her face." The complaint alleged that Ms. Chavis believed that "there is danger of serious and immediate injury to me or my children."
 - b. The December 31, 2002 order found that Petitioner and Ms. Chavis were persons of the opposite sex who are not married but who live together or have lived today, and that they are in a dating relationship. The order found that Petitioner placed Ms. Chavis in actual fear of imminent serious bodily injury.
 - c. On December 31, 2012, a Civil Summons was issued against Petitioner. (Respondent's exhibit 4)
 - d. On January 16, 2002, a Civil Summons for the ex parte domestic violence protective order was served on Petitioner.
 - e. On January 28, 2002, the trial court entered an order that stated that "this case is dismissed for the plaintiff's failure to prosecute."

2. On March 28, 2002, Ms. Chavis filed a civil summons against Petitioner in Cumberland County, North Carolina. (Respondent's exhibit 5) The complaint alleged that Petitioner [] has been engaged in a course of conduct toward [Ms. Chavis] and against [Ms. Chavis] in such a manner that unless immediately restrained will result in irreparable injury and harm as follows."

a. The complaint alleged:

That on or about March 15, 2002, Defendant continuously called Plaintiff on a cell phone verbally harassing her and wanting to know where she was and when she was going home. The Defendant became angry when he found out that she was with a friend, a [sic] was waiting in her house when she arrived home.

On or about March 16, 2002, in the early morning, Plaintiff was trying to get ready for work, when Defendant in the heat of an argument, came into the bathroom, pulled the curling iron out of the wall, and burned himself, wherein he became furious and grabbed Plaintiff's face and started squeezing her, then twisted her arms and began hitting Plaintiff.

On or about March 16, 2002 Defendant was arrested for criminal assault on a female wherein the bond hearing was held on March 18, 2002 and Defendant was ordered to stay away from the Plaintiff, refrain from all contact and be accompanied by Sheriff to pick up any personal belongings from Plaintiff's residence.

On or about March 18, 2002, Defendant called Plaintiff to see if he could pick up his personal belongings from Plaintiff's apartment, and was told to be escorted by the police. When Defendant arrived the police were not with Defendant, and Defendant informed Plaintiff that he was dropped off at the corner. Defendant forced his way into the apartment and began to assault Plaintiff. Plaintiff called the police and the police arrived and asked Defendant to leave the premises.

On or about March 22, 2002, Defendant was parked outside of the apartment complex waiting for Plaintiff to return from work. As Plaintiff got out of her car, Defendant ran towards her shouting obscenities. Plaintiff called the police but was told by the dispatcher that nothing could be done if Defendant was gone by the time they got there. Later that evening, Plaintiff was talking with a friend on the telephone and heard a loud bang, and found out that Defendant had taken a ladder from a Construction site behind the apartment complex and had leaned up against the

apartment building and was trying to get in the window. The police were called and were unable to locate the Defendant, and upon information and belief of the Plaintiff it was the Defendant who tried to break into the window.

- b. On March 28, 2002, the trial court entered a temporary restraining order pursuant to Ms. Chavis's complaint granting Ms. Chavis the sole and exclusive use and possession of the residence located at 592#D Lambert Street, Fayetteville, North Carolina, evicting Petitioner and enjoining Petitioner from assaulting, molesting, harassing or interfering with Ms. Chavis in any way or manner or at any time or place.
- c. On June 12, 2002, the trial court entered a restraining order against Petitioner based upon Ms. Chavis's complaint. Petitioner had retained an attorney, and his attorney appeared in court in Cumberland County on his behalf. Petitioner signed the restraining order. The order stated that Petitioner would be enjoined or restrained from assaulting, molesting, harassing, telephone calling, following, stalking or interfering with the other party in any way or manner at any time or place. The order stated that the Sheriff of Cumberland County would have a copy of the order. The order was in effect for one year from the date of June 12, 2002.

Central Carolina Community College Police Department

- 6. On **December 15, 2006**, Petitioner completed a Form F-3 Personal History Statement to be submitted to the Commission for certification as a law enforcement officer. Petitioner's December 15, 2006 Form F-3 Personal History Statement was completed through Central Carolina Community College. An individual with Central Carolina Community College signed, dated, and notarized his Form F-3 Personal History Statement. Directly above the 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 48 of Petitioner's June 9, 2005 Form F-3 Personal History Statement stated: Have you ever had a Domestic Violence Protective Order issued against you? Include both ex-parte Domestic Violence Protective Orders and those entered subsequent to a hearing. Petitioner answered "No."

- B. Petitioner failed to answer this question truthfully because he failed to disclose that on December 31, 2001, an ex-parte domestic violence protective order was entered against him, which was served on him on January 16, 2002. Petitioner also failed to answer this question truthfully because he failed to disclose that on March 28, 2002, a temporary restraining order was entered against him, which was served on him on April 2, 2002.

Fayetteville State University Police Department Application

- 7. On **February 5, 2008**, Petitioner completed a Form F-3 Personal History Statement to be submitted to the Commission for certification as a law enforcement officer with Fayetteville State University Police Department. (Respondent's exhibit 9) 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 understand that any misstatement or omission of information will subject me to disqualification or dismissal.

- A. Question 48 of Petitioner's June 9, 2005 Form F-3 Personal History Statement stated: Have you ever had a Domestic Violence Protective Order issued against you? Include both ex-parte Domestic Violence Protective Orders and those entered subsequent to a hearing. Petitioner answered "No."
 - B. Petitioner failed to answer this question truthfully because he failed to disclose that on December 31, 2001, an ex-parte domestic violence protective order was entered against him, which was served on him on January 16, 2002. Petitioner also failed to answer this question truthfully because he failed to disclose that on March 28, 2002, a temporary restraining order was entered against him, which was served on him on April 2, 2002.
- 8. On February 5, 2008, Petitioner completed a Mandated Background Investigation and submitted a Form F-8 to Respondent for certification for employment with Fayetteville State University Police Department. (Respondent's exhibit 10)
 - A. Petitioner was interviewed by Jacqueline Clay and provided answers to questions for his Mandated Background Investigation which were submitted to the Commission for his application for certification. (Respondent's exhibit 10)
 - B. Petitioner was asked "Have you ever had any type of Domestic Violence Restraining Order issued against you? Petitioner answered "no." (Respondent's exhibit 10)
 - C. Petitioner failed to answer this question truthfully because he failed to disclose that on December 31, 2001, an ex-parte domestic violence protective order was entered against him, which was served on him on January 16, 2002. Petitioner

also failed to answer this question truthfully because he failed to disclose that on March 28, 2002, a temporary restraining order was entered against him, which was served on him on April 2, 2002.

Saint Augustine College Police Department Application

9. On **March 25, 2011**, Petitioner completed a Form F-3 Personal History Statement to be submitted to the Commission for certification as a law enforcement officer with Saint Augustine College Police Department. (Respondent's exhibit 14) 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 47 asked: "Have you ever been arrested by a law enforcement officer or otherwise charged with a criminal offense?" Petitioner answered the question "no." (Respondent's exhibit 14) Petitioner failed to answer this question truthfully because he failed to list that on July 4, 2010, while deployed with the U.S. military to Afghanistan, he was detained and advised of his legal rights by the military police regarding an allegation that he had assaulted an individual.

1. Evidence showed that on July 4, 2010, Petitioner was charged with simple assault. (Respondent's exhibit 15) A narrative provided on the military police report stated that Petitioner "locked the door, grabbed [the victim] by the throat and dragged [the victim] on the floor saying never to embarrass him like that, [the victim] also stated he was unable to yell for help because of the hold [Petitioner] had on him. [The victim] stated [Petitioner] said that if he were disrespected again [Petitioner] would kill him and threatened him if he told anyone. [The victim] also stated [Petitioner] had him in a choke hold for 5-8 minutes and slapped him twice for disrespecting him. [Petitioner] was advised of his Article 31 Rights (Via DA Form 3881, rights warning procedure/waiver certificate) waived his rights and agreed to make a statement.

- B. Question 39 asked: "Were you ever court-martialed, tried on charges, or were you the subject of a summary court, deck court, or non-judicial punishment (Captain's mast, company punishment, Article 15, etc.) or any other disciplinary action while a member [of the] armed forces?" Petitioner checked the box "no." (Respondent's exhibit 14) Petitioner failed to answer this question truthfully because he failed to indicate that while a member of the United States Armed Forces, North Carolina National Guard, he had received a Field Grade Article 15,

non-judicial punishment, on November 1, 2010 in which he received the punishment of “Reduction to the Grade of Specialist, E-4.”

1. Evidence showed that on November 1, 2010, Petitioner received an Article 15, non-judicial punishment. (Respondent’s exhibit 17) The grounds for the Article 15, non-judicial punishment were that Petitioner “with intent to deceive” told “First Sergeant Eddie Dean, an official statement, to wit: ‘I don’t know where Major John A. Vaanho got the information that I couldn’t wear my improved outer tactical vest,’ or words to that effect, which statement was totally false, and was then known by you to be so false. This is in violation of Article 107, UCMJ.” The other grounds for the Article 15, non-judicial punishment were that on July 4, 2010, Petitioner assaulted Sergeant Olukayode A. Alabi by grabbing his hand, that Petitioner pushed Alabi’s chest with his hands, and that he grabbed Alabi by the throat, pulling him to the floor and striking. Petitioner’s Article 15 showed that he received notice of the Article 15 because he signed the document.

C. Question 40 asked: “List any disciplinary action taken against you in the National Guard or other reserve unit[.]” Petitioner answered “None.” (Respondent’s exhibit 14) Petitioner failed to answer this question truthfully because he failed to indicate that while a member of the United States Armed Forces, North Carolina National Guard, he had received a Field Grade Article 15, non-judicial punishment, on November 1, 2010 in which he received the punishment of Reduction to the Grade of Specialist, E-4.”

Taylortown Police Department Application

10. On **May 10, 2011**, Petitioner completed a Form F-5A Report of Appointment Form to be submitted to the Commission for certification as a law enforcement officer with Taylortown Police Department.

A. Petitioner signed and dated the Form F-5A and the following paragraph was directly above his signature:

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.

- B. The Form F-5A states: Each applicant must list any and all criminal charges regardless of the date of offense and the disposition (to include dismissals, not guilty, nol pros, PJC, or any other disposition where you entered a plea of guilty).
 - C. Petitioner checked the box indicating “no criminal charges.” Petitioner initialed the box checked.
 - D. Petitioner was untruthful when he provided this answer. Petitioner failed to provide information that on June 16, 2006, he was charged with aggravated assault. (Respondent’s exhibit 20) Petitioner cannot claim that he did not know about the charge, particularly because he listed the charge on his May 13, 2008 Form F-5A for his application for certification with Fayetteville State University Police Department (Respondent’s exhibit 8), and listed the charge on his F-5A with Saint Augustine Collect Police Department on March 27, 2011. (Respondent’s exhibit 27)
 - E. In any event, evidence showed that on July 16, 2006, Petitioner was charged with Aggravated Assault by the Fayetteville Police Department. (Respondent’s exhibit 20) The victim provided a statement that she was “walking down Gables Dr to stop her friend . . . from arguing with [Petitioner]. As she was coming down the hill [Petitioner] had pulled his weapon and pointed it at the car. She states that he then turned to her and pointed the small black handgun at her. He holstered the weapon, she then got in the car and drove her friend back up the hill. He got in his car and left just prior to our arrival.” (Respondent’s exhibit 20) Law enforcement filed a police report and charged Petitioner with aggravated assault. Fayetteville Police Department Officer Kiger obtained a magistrate’s order against Petitioner for assault by pointing a gun. (Respondent’s exhibit 21) A voluntary dismissal was taken on the charge. (Respondent’s exhibit 23) Nonetheless, Petitioner was in fact charged with aggravated assault or assault by pointing a gun, and Petitioner failed to be truthful when he did not disclose this charge on his Form F-5A with Taylortown Police Department. (Respondent’s exhibit 19)
11. In May 2011, Petitioner completed a Mandated Background Investigation and submitted a Form F-8 to Respondent for certification for employment with Taylortown Police Department. (Respondent’s exhibit 30)
- A. As part of Petitioner’s mandated background investigation, he was asked a series of questions concerning his military service. (Respondent’s exhibit 30)

- B. Petitioner was asked “Explain any negative entries that may have been placed into your personnel file even though they may have been removed.” Petitioner answered “none.” Petitioner was untruthful when he answered this question because he failed to disclose that when he was a member of the United States Armed Forces, North Carolina National Guard, that he had received a Field Grade Article 15, non-judicial punishment, on November 1, 2010 in which he received the punishment of “Reduction to the Grade of Specialist, E-4.”
- C. Petitioner was also asked “Were you disciplined to any degree: Court Martialed, Reprimanded (including Article 15), etc.” Petitioner answered “no.” Petitioner was untruthful when he answered this question because he failed to disclose that when he was a member of the United States Armed Forces, North Carolina National Guard, that he had received a Field Grade Article 15, non-judicial punishment, on November 1, 2010 in which he received the punishment of “Reduction to the Grade of Specialist, E-4.”
- D. Petitioner was also asked “Describe any arrests or conviction under UCMJ?” Petitioner answered “none.” Petitioner was untruthful when he answered this question because he failed to disclose that when he was a member of the United States Armed Forces, North Carolina National Guard, that he had received a Field Grade Article 15, non-judicial punishment, on November 1, 2010 in which he received the punishment of Reduction to the Grade of Specialist, E-4.”
12. On August 7, 2011, Petitioner completed a Mandated Background Investigation and submitted a Form F-8 to Respondent for certification for employment with St. Augustine’s College Police Department. (Respondent’s exhibit 31) Petitioner was asked questions by C. Lupo for his application for commissioning and his employment with St. Augustine’s College Police Department.
- A. Petitioner was asked for Question 32: “Describe any criminal involvement that you may have had in the past.” Petitioner answered “charged with assault by pointing a gun. That was dismissed by the DA, and I was also exonerated by training and standrds [sic].” Petitioner was untruthful when he answered this question because he failed to disclose that on July 4, 2010, while deployed with the U.S. military to Afghanistan, he was detained and advised of his legal rights by the military police regarding an allegation that he had assaulted an individual.
- B. Petitioner was asked for Question 35: “Have you ever been arrested, detained, or charged with a crime, even if the charges against you have been dismissed?” Petitioner answered “Yes.” Petitioner was untruthful when he answered this question because he failed to disclose that on July 4, 2010, while deployed with the U.S. military to Afghanistan, he was detained and advised of his legal rights by the military police regarding an allegation that he had assaulted an individual.
- C. Petitioner was asked for Question 5 for the questions about his military service: “Explain any negative entries that may have been placed in your personnel file even though they may have been removed.” Petitioner answered “None.”

Petitioner was untruthful when he answered this question because he failed to disclose that when he was a member of the United States Armed Forces, North Carolina National Guard, that he had received a Field Grade Article 15, non-judicial punishment, on November 1, 2010 in which he received the punishment of “Reduction to the Grade of Specialist, E-4.”

D. Petitioner was asked for Question 6 for the questions about his military service: “Were you disciplined to any degree? Court Martialed, Reprimanded (including Article 15), etc.” Petitioner answered “No.” Petitioner was untruthful when he answered this question because he failed to disclose that when he was a member of the United States Armed Forces, North Carolina National Guard, that he had received a Field Grade Article 15, non-judicial punishment, on November 1, 2010 in which he received the punishment of “Reduction to the Grade of Specialist, E-4.”

E. Petitioner was asked for Question 9 for the questions about his military service: “Describe any arrests or convictions under UCMJ.” Petitioner answered “No.” Petitioner was untruthful when he answered this question because he failed to disclose that when he was a member of the United States Armed Forces, North Carolina National Guard, that he had received a Field Grade Article 15, non-judicial punishment, on November 1, 2010 in which he received the punishment of “Reduction to the Grade of Specialist, E-4.”

13. On November 18, 2011, Petitioner completed a Form F-3 Personal History Statement to be submitted to the Commission for certification as a law enforcement officer with St. Augustine College Police Department. (Respondent’s exhibit 32) Petitioner’s November 18, 2011 Form F-3 Personal History Statement was submitted to the Commission for certification with St. Augustine’s College 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 47 asked: “Have you ever been arrested by a law enforcement officer or otherwise charged with a criminal offense?” Petitioner answered the question “yes” and stated that he was charged with assault by pointing a gun on June 16, 2006 by Fayetteville Police Department, and that charges were dismissed by the district attorney. Petitioner was untruthful when he answered this question because he failed to list that on July 4, 2010, while deployed with the U.S. military to Afghanistan, he was detained and advised of his legal rights by the military police regarding an allegation that he had assaulted an individual.

- B. Question 39 asked: “Were you ever court-martialed, tried on charges, or were you the subject of a summary court, deck court, or non-judicial punishment (Captain’s mast, company punishment, Article 15, etc.) or any other disciplinary action while a member [of the] armed forces?” Petitioner checked the box “no.” (Respondent’s exhibit 14) Petitioner was untruthful when he answered this question because he failed to indicate that while a member of the United States Armed Forces, North Carolina National Guard, he had received a Field Grade Article 15, non-judicial punishment, on November 1, 2010 in which he received the punishment of “Reduction to the Grade of Specialist, E-4.”
- C. Question 40 asked: “List any disciplinary action taken against you in the National Guard or other reserve unit[.]” Petitioner answered “None.” (Respondent’s exhibit 14) Petitioner was untruthful when he answered this question because he failed to indicate that while a member of the United States Armed Forces, North Carolina National Guard, he had received a Field Grade Article 15, non-judicial punishment, on November 1, 2010 in which he received the punishment of “Reduction to the Grade of Specialist, E-4.”
14. Petitioner requested an administrative hearing.
15. Respondent’s investigator Richard Squires testified at the hearing that Respondent received documentation submitted on behalf of Petitioner for certification as a law enforcement officer with the North Carolina State Highway Patrol, Central Carolina Community College, Fayetteville State University Police Department, Taylortown Police Department, and St. Augustine’s College Police Department. Squires testified that he collected documents for Petitioner’s application for certification and that he reviewed the documents and found inconsistencies within the documents. 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. Squires testified that he drafted the memorandum to be submitted to the probable cause committee, who found probable cause existed to suspend or deny Petitioner’s application for certification. (Respondent’s exhibit 33)
16. Petitioner testified and admitted that this information should have been disclosed. He testified that he completed the Form F-3 with the State Highway Patrol, the Form F-3 with Central Carolina Community College, and the Form F-3 with Fayetteville State Police Department. He admitted that he completed three Personal History Statements, and all three contained the same questions for question 48. He admitted that in all three documents, he checked “no.” He claimed that he checked no because he had a conversation with someone at the State Highway Patrol, someone at Central Carolina Community College, and someone at Fayetteville State Police Department, and someone with training and standards, and stated that he was told not to list the ex parte domestic violence protective order or the temporary restraining order. No one testified on Petitioner’s behalf to this allegation. He also thought that domestic violence protective orders had been expunged, although he provided no documentation showing that they had

been expunged or explaining why he thought they had been expunged. He also failed to explain how a civil order could be expunged and he stated that he now understood that expungements apply to criminal orders only. Petitioner did not update his Form F-3s after discovering this information. Petitioner thought that the Taylortown Police Department forms had been updated after he submitted them to training and standards, but failed to provide any evidence of the updated forms. He admitted that he failed to list military disciplinary actions. He stated that it was an honest mistake for not listing assault by pointing a gun.

17. Petitioner's explanation for why he made nineteen misrepresentations is implausible. Petitioner failed to present any documentation supporting his claims, and failed to provide a reasonable believable excuse for his failure to include this information on the forms. Petitioner knowingly made nineteen material misrepresentations in the forms that he completed to be submitted for certification with the Commission.

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 June 9, 2005 for the North Carolina Highway Patrol. Petitioner made a material misrepresentation when he answered Question 48 and failed to truthfully answer when asked whether he had ever had a Domestic Violence Protection Order issued against him.
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 December 15, 2006 for Central Carolina Community College. Petitioner made a material misrepresentation when he answered Question 48 and failed to truthfully answer when asked whether he had ever had a Domestic Violence Protection Order issued against him.
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 February 5, 2008 for Fayetteville State University Police Department. Petitioner made a material misrepresentation when he answered Question 48 and failed to truthfully answer when asked whether he had ever had a Domestic Violence Protection Order issued against him.
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 Mandated Background Investigation on February 5, 2008 for Fayetteville State University Police Department. Petitioner made a material misrepresentation when he failed to truthfully answer when asked whether he had ever had a Domestic Violence Protection Order issued against him.
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 March 25, 2011 for St. Augustine College Police Department. Petitioner made a material misrepresentation when he answered Question 47 and failed to truthfully answer when asked whether he had ever been arrested or charged with a criminal offense.
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 March 25, 2011 for St. Augustine College Police Department. Petitioner made a material misrepresentation when he answered Question 39 and failed to truthfully answer when asked whether he had ever been court-martialed, tried on charges, or subject of a summary court, deck court, or non-judicial punishment.
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 March 25, 2011

for St. Augustine College Police Department. Petitioner made a material misrepresentation when he answered Question 40 and failed to truthfully answer when asked whether he had ever been subject to any disciplinary action taken against him in the National Guard or other reserve unit.

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 Report of Appointment, Form F-5A on May 10, 2011 for Taylortown Police Department. Petitioner made a material misrepresentation when he failed to truthfully answer when asked to list his criminal charges.
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 Mandated Background Investigation, Form F-8 in May 2011 for Taylortown Police Department. Petitioner made a material misrepresentation when he answered Question 5 and failed to truthfully answer when asked whether he had ever had any negative entries placed in his personnel file.
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 Mandated Background Investigation, Form F-8 in May 2011 for Taylortown Police Department. Petitioner made a material misrepresentation when he answered Question 6 and failed to truthfully answer when asked whether he had ever been disciplined in any degree including court-martialed or reprimanded.
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 Mandated Background Investigation, Form F-8 in May 2011 for Taylortown Police Department. Petitioner made a material misrepresentation when he answered Question 9 and failed to truthfully answer when to describe any arrests or convictions under The Uniform Code of Military Justice.
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 Mandated Background Investigation, Form F-8 on August 7, 2011 for St. Augustine College Police Department. Petitioner made a material misrepresentation when he answered Question 32 and failed to truthfully answer when asked to describe any criminal conduct he may have had in the past.
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 7, 2011 for St. Augustine College Police Department. Petitioner made a material misrepresentation when he answered Question 35 and failed to truthfully answer when asked whether he had ever been arrested, detained, or charged with a crime.

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 7, 2011 for St. Augustine College Police Department. Petitioner made a material misrepresentation when he answered Question 5 and failed to truthfully answer when asked whether he had any negative entries that may have been placed in his personnel file.
19. 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 7, 2011 for St. Augustine College Police Department. Petitioner made a material misrepresentation when he answered Question 6 and failed to truthfully answer when asked whether he had ever been disciplined to any degree.
20. 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 7, 2011 for St. Augustine College Police Department. Petitioner made a material misrepresentation when he answered Question 9 and failed to truthfully answer when asked whether he had ever been arrested or convicted under The Uniform Code of Military Justice.
21. 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 18, 2011 for St. Augustine College Police Department. Petitioner made a material misrepresentation when he answered Question 47 and failed to truthfully answer when asked whether he had ever been arrested or charged with a criminal offense.
22. 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 18, 2011 for St. Augustine College Police Department. Petitioner made a material misrepresentation when he answered Question 39 and failed to truthfully answer when asked whether he had ever been court-martialed, tried on charges, or the subject of a summary court, deck court, captain's mast or company punishment, or any other disciplinary action while a member of the armed forces.
23. 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 18, 2011 for St. Augustine College Police Department. Petitioner made a material misrepresentation when he answered Question 40 and failed to truthfully answer when asked to list any disciplinary action taken against him in the National Guard or other reserve unit.

24. The findings of the Probable Cause Committee of the Respondent are supported by substantial evidence.
25. 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).
26. Respondent has the burden of proof in the case at bar. Respondent has showed by a preponderance of the evidence that Respondent's proposed denial of Petitioner's law enforcement officer certification is supported by substantial evidence.

PROPOSAL FOR DECISION

After careful consideration of the evidence the proposals and arguments counsel and based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the Undersigned finds that in many respects Petitioner has had a commendable life, and there is no direct proof that his misrepresentations were knowing and intentional. However, there were simply too many instances of this behavior to turn a blind eye to them. Therefore, the undersigned Administrative Law Judge recommends Respondent deny Petitioner's law enforcement officer certification for a period up to four (4) years based upon Petitioner's several material misrepresentations of information required for certification.

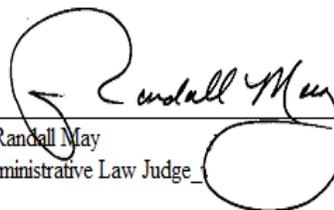
ORDER AND NOTICE

The Agency making the Final Decision in this contested case is required to give each party an opportunity to file Exceptions to the Proposal for Decision, to submit Proposed Findings of Fact, and to present oral and written arguments to the Agency. N.C. Gen. Stat. § 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.

It is hereby 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 23rd day of August, 2013, *remote supplicio*.



J. Randall May
Administrative Law Judge