

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12DOJ10205

FORREST TRAVIS COSTON,
Petitioner,

v.

NC CRIMINAL JUSTICE EDUCATION
AND TRAINING STANDARDS
COMMISSION,
Respondent.

DECISION

This case came on for hearing on February 4, 2014 before Administrative Law Judge Selina M. Brooks in Charlotte, North Carolina. This case was heard after Respondent requested, 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.

APPEARANCES

Petitioner: Forrest Travis Coston, *pro se*
6500 Wickville Drive
Charlotte, North Carolina 28215

Respondent: Catherine F. Jordan
Assistant Attorney General
North Carolina Department of Justice
Law Enforcement Liaison Section
9001 Mail Service Center
Raleigh, North Carolina 27699-9001

ISSUES

Did Respondent properly deny or suspend Petitioner's law enforcement officer certification because Petitioner failed to comply with the minimum standards for certification in that Petitioner committed the Class B misdemeanor of "Hit/Run Fail Stop Property Damage" and that Petitioner failed to meet or maintain one or more of the minimum employment standards that every criminal justice officer be of good moral character?

EXHIBITS

Respondent's Exhibits 1-21 were admitted into evidence.

WITNESSES

For Petitioner:

Forrest Travis Coston, Petitioner

For Respondent:

Richard N. Squires, Investigator for Respondent

Timothy Shelton, Sergeant, Internal Affairs, Charlotte-Mecklenburg Police Department, retired

Ryan Shields, Patrol Officer, Charlotte-Mecklenburg Police Department

APPLICABLE RULES

12 NCAC 09A .0204(b)(3)(A)

12 NCAC 09A .0103(23)(b)

N.C.G.S. § 20-166(c)

12 NCAC 09A .0205(b)(1)

12 NCAC 09A .0204(b)(2)

12 NCAC 09B .0101(3)

N.C.G.S. § 17C-10

12 NCAC 09A .0205(c)(2)

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. In the absence of a transcript, the Undersigned has reviewed her notes to refresh her recollection.

ORDER TO ADOPT FINDINGS

Respondent's September 6, 2012 Proposed Denial/Suspension of Law Enforcement Officer Certification letter and probable cause findings were based upon several allegations, including issues of fact previously litigated in Forrest Travis Coston v. N.C. Department of Crime Control and Public Safety, N.C. State Highway Patrol, 00 OSP 0022, and in Forrest Travis Coston v. University of North Carolina-Charlotte, 09 OSP 6459. Prior to the contested case

hearing in the present matter, Respondent submitted a Motion to Adopt Findings, and moved for the Undersigned to adopt the findings of fact from the Decisions in both contested cases. On January 30, 2014, Respondent's motion was granted, and it was ordered that "[t]he contested case hearing will be limited to any issues of fact not previously litigated in case numbers 00 OSP 0022 and 09 OSP 6459."

FINDINGS OF FACT

1. On November 27, 1985, Respondent received a Report of Appointment submitted by the State Highway Patrol on behalf of Petitioner. Respondent issued Probationary Certification on December 12, 1985 and General Certification on December 12, 1986 to Petitioner. (Respondent's Exhibits 1, 2 & 3)
2. On October 28, 1999, Respondent received a Report of Separation Form F-5B submitted by the State Highway Patrol which stated that Petitioner was dismissed for "Violation of Patrol Policy (Personal Conduct)". (Respondent's Exhibit 4)
3. Petitioner appealed his dismissal from the State Highway Patrol.
4. On January 21, 2000, Respondent received a Report of Appointment Form F-5A submitted by the UNC-Charlotte Police Department on behalf of Petitioner. (Respondent's Exhibit 6) On February 1, 2000, Respondent issued General Certification to Petitioner for appointment as a law enforcement officer. (Respondent's Exhibit 7)
5. A contested case hearing concerning Petitioner's dismissal from the State Highway Patrol was held on July 6-7, 2000. The Findings of Fact as stated in the Decision entered on January 24, 2001 in Forrest Travis Coston v. N.C. Department of Crime Control and Public Safety, N.C. State Highway Patrol, 00 OSP 0022, are incorporated herein as if restated in full. The administrative law judge found that Petitioner had been untruthful but based upon mitigating factors, recommended Petitioner's reinstatement as an employee with the State Highway Patrol. (Respondent's Exhibits 5 & 5a)
6. On September 8, 2009, Petitioner was dismissed from the UNC-Charlotte Police Department. (Respondent's Exhibit 8)
7. On July 26, 2010, Respondent received a Report of Appointment Form/Application For Certification of Law Enforcement Officer Form F-5A submitted by FTC Company Police on behalf of Petitioner. (Respondent's Exhibit 13) Petitioner testified that FTC Company Police is a private business named after himself.
8. On August 26, 2010, Respondent received a Report of Separation Form F-5B submitted by the UNC-Charlotte Police Department which stated that the Petitioner would not be considered for reappointment. (Respondent's Exhibit 8)
9. Petitioner appealed his dismissal from the UNC-Charlotte Police Department and the contested case hearing was held on November 8-10, 2010. The Findings of Fact as stated in the

Decision entered on February 22, 2011 in Forrest Travis Coston v. University of North Carolina-Charlotte, 09 OSP 6459, are incorporated herein as if restated in full. The administrative law judge found that Petitioner was untruthful during an investigation by the UNC-Charlotte Police Department and there was just cause to discharge Petitioner. (Respondent's Exhibits 9 & 9a)

10. On February 9, 2011 around 2:23 a.m., Charlotte-Mecklenburg Police Department (CMPD) Officer Ryan Shields issued a North Carolina Uniform Citation against Petitioner for "Fail to stop the vehicle the defendant was driving at the scene of an accident and collision resulting in propert[y] damage to the Duke Telephone Pole when the [defendant] should have known his vehicle was involved. G.S. 20-166(c)" and for driving "[w]hile subject to an impairing substance. G.S. 20-138.1." (Respondent's Exhibit 10)

11. Petitioner's "hit and run, failure to stop, property damage" charge was voluntarily dismissed. Petitioner pled guilty to the charge of DWI - Level V, and the trial court sentenced him to 30 days imprisonment with twelve months unsupervised probation for the conviction. (Respondent's Exhibit 12)

12. At some point after July 26, 2010, Investigator Richard N. Squires conducted an investigation after Respondent received the Report of Appointment Form/Application For Certification of Law Enforcement Officer Form F-5A from the FTC Company Police. On April 10, 2012, he submitted a memorandum to Respondent's Probable Cause Committee for a determination on the denial or suspension of Petitioner's law enforcement officer certification based upon the commission of a Class B misdemeanor of "Hit/Run Fail Stop Property Damage" and for lack of good moral character. (Respondent's Exhibit 14)

13. On August 22, 2012, Respondent's probable cause committee found probable cause to deny or suspend Petitioner's law enforcement officer certification based upon Petitioner's failure to meet or maintain minimum standards required for criminal justice officers in that Petitioner committed the Class B misdemeanor of "Hit/Run Fail Stop Property Damage" and that Petitioner lacked the good moral character required of criminal justice officers. (Respondent's Exhibit 15)

14. Petitioner appealed this decision of the Probable Cause Committee and a contested case hearing was held before the Undersigned on February 4, 2014.

15. Investigator Squires testified that he has been an investigator since 2001, and conducts administrative investigations regarding certification issues for law enforcement officers on behalf of Respondent. He testified that honesty and integrity is an important trait of law enforcement officers.

16. Investigator Squires collected the documents concerning Petitioner's 2011 criminal charge of the Class B misdemeanor offense of "Hit/Run Fail Stop Property Damage." (Respondent's Exhibits 10, 11 & 12)

17. CMPD Officer Shields testified that he had been employed with the CMPD for five years and is a patrol officer. He was working the night of February 9, 2011 when he responded to a call around 2:23 a.m. He arrived at the scene at Beatties Ford Road, and noticed a Pontiac

Bonneville with a North Carolina license plate that was crashed into a power pole. Officer Shields ran the tags and found that the vehicle was registered to Petitioner. The power pole had been split in half. Officer Shields exited his patrol vehicle, walked up to the Bonneville, and saw that there was no one around the vehicle. He noticed that paperwork was inside the car, and discovered business cards belonging to Petitioner inside the vehicle. Officer Shields checked around the vehicle. Officer Shields found a red solo cup outside directly beside the vehicle which contained liquid. He smelled the liquid inside of the cup, and identified that liquid as an alcoholic beverage. Another officer was following Petitioner, and a perimeter was established within a five-block radius to apprehend Petitioner who was last seen in an open field. Officer Shields's supervisor found Petitioner and brought him back to the scene of the accident. Petitioner refused to provide a sample for breathaline alco-sensor. Officer Shields transported Petitioner to Intake, and asked Petitioner to provide a sample for the Intoxilyzer, which is an instrument that will give a reading for blood-alcohol content.

18. Officer Shields completed a Uniform Citation which charged Petitioner with the criminal offenses of hit and run under N.C.G.S. § 20-166(c) and DWI with impairing substance under N.C.G.S. § 20-138.1. (Respondent's Exhibit 10)

19. According to the CMPD arrest report, Petitioner was observed discarding the red solo cup and leaving the scene of the accident by a Johnson C. Smith University Police Officer. (Respondent Exhibit 14)

20. Concerning these criminal charges, Petitioner testified that he was driving his vehicle the night of February 9, 2011, and that he was drinking alcohol. He admitted that he crashed the vehicle into a power pole, that he caused damage to the power pole, and that he knew he caused this property damage. He said that he was dazed from the air bag, that he did not know where he was, and that he found out where he was when the police officer grabbed him. He testified that he cannot remember whether he was wearing a seatbelt. Petitioner also testified that he got out of his car, started walking away from his vehicle, and that he knew he was walking away from the vehicle. He did not remember a red solo cup. He testified that he walked approximately a couple of minutes before he fell to the ground in a residential neighborhood. He testified that he knew he was walking away from his car after an accident that caused property damage. He testified that he was not far from the accident, but that he was not at the scene of the accident. He testified that he did not see a medical professional or receive any medical attention. He testified that he did not have any medical records related to the accident. When asked whether he had any injury, he testified that he had a headache.

21. The Undersigned finds the testimony of Mr. Squires and Officer Shields to be credible and to carry greater weight.

22. The Undersigned finds the testimony of Petitioner to be not credible and to carry lesser weight.

23. The bases of Respondent's consideration of and proposed denial/suspension of law enforcement certification for Petitioner are set forth in Respondent's Exhibits 14 and 15. The

allegations and statements contained therein solely concern the events stated in Findings of Fact numbered 1 through 22 above.

24. At the contested case hearing held before the Undersigned on February 4, 2014, testimonial and documentary evidence also was received on a separate issue as set forth below.

25. On April 22, 2001, Accessible Special Police submitted a Personal History Statement Form F-3 to Respondent on Petitioner's behalf. (Respondent's Exhibit 16)

26. On July 26, 2005, Metro Special Police submitted a Personal History Statement Form F-3 to Respondent on Petitioner's behalf. (Respondent's Exhibit 17)

27. In 2001 and 2005, in response to Question 44, "Have you ever used marijuana?", Petitioner answered, "Yes." (Respondent's Exhibits 16 & 17)

28. On July 26, 2010, FTC Company Police submitted a Personal History Statement Form F-3 to Respondent on Petitioner's behalf. (Respondent's Exhibit 18)

29. In 2010, in response to Question 44, "Have you ever used marijuana?", Petitioner answered, "No." (Respondent's Exhibit 18)

30. Petitioner signed and had notarized each Form F-3 directly under a sentence that stated 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." (Respondent's Exhibits 16, 17 & 18)

31. Petitioner was untruthful when he answered Question 44, and swore it to be true.

32. On April 25, 2001, Respondent received a Mandated Background Investigation Form F-8 submitted by Accessible Special Police on behalf of Petitioner. (Respondent's Exhibit 20)

33. On July 26, 2005, Respondent received a Mandated Background Investigation Form F-8 submitted by Metro Special Police on behalf of Petitioner. (Respondent's Exhibit 21)

34. In 2001 and 2005, the Petitioner was interviewed as part of the investigation. In response to the Applicant Interview Question, "Have you ever used any of the following drugs?", Petitioner answered, "Yes" or "Marijuana". (Respondent's Exhibits 20 & 21)

35. On July 26, 2010, Respondent received a Mandated Background Investigation Form F-8 submitted by FTC Company Police on behalf of Petitioner. (Respondent's Exhibit 19)

36. In 2010, in response to the Applicant Interview Question, "Have you ever used any of the following drugs?", Petitioner answered "No." (Respondent's Exhibit 19)

37. Petitioner was untruthful when he answered this Applicant Interview Question.

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 this 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)(3)(A) 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:

(3) has committed or been convicted of:

(A) a criminal offense or unlawful act defined in 12 NCAC
09A .0103 as a Class B misdemeanor[.]

4. 12 NCAC 09A .0103(23) states that:

(23) “Misdemeanor” means those criminal offenses not classified under the laws, statutes, or ordinances as felonies. Misdemeanor offenses are classified by the Commission as follows:

(a) ... Also specifically included herein as a Class A Misdemeanor is the offense of impaired driving, if the offender was sentenced under punishment ... level five [G.S. 20-179(k)] ...

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

5. The North Carolina Criminal Justice Education and Training Standards Commission’s Class B Misdemeanor Manual in effect in February 2011, specifies the criminal offense of “Hit/Run Fail Stop Property Damage” is a Class B misdemeanor. See <http://www.ncdoj.gov/About-DOJ/Law-Enforcement-Training-and-Standards/Criminal-Justice-Standards/CJ-Standards/Documents/Class-B-Misdemeanor-Manual-2005.aspx>.

6. N.C.G.S. § 20-166(c) states:

(c) The driver of any vehicle, when the driver knows or reasonably should know that the vehicle which the driver is operating is involved in a crash which results:

(1) Only in damage to property; or

(2) In injury or death to any person, but only if the operator of the vehicle did not know and did not have reason to know of the death or injury;

shall immediately stop the vehicle at the scene of the crash. If the crash is a reportable crash, the driver shall remain with the vehicle at the scene of the crash until a law enforcement officer completes the investigation of the crash or authorizes the driver to leave and the vehicle to be removed, unless remaining at the scene places the driver or others at significant risk of injury.

Prior to the completion of the investigation of the crash by a law enforcement officer, or the consent of the officer to leave, the driver may not facilitate, allow, or agree to the removal of the vehicle from the scene, for any purpose other than to call for a law enforcement officer, to call for medical assistance or medical treatment, or to remove oneself or others from significant risk of injury. If the driver does leave for a reason permitted by this subsection, then the driver must return with the vehicle to the accident scene within a reasonable period of time, unless otherwise instructed by a law enforcement officer. A willful violation of this subsection is a Class 1 misdemeanor.

7. 12 NCAC 09A .0205(b)(1) states that:

(b) 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:

(1) commission or conviction of a criminal offense other than those listed in Paragraph (a) of this Rule[.]

8. 12 NCAC 09A .0204(b)(2) states:

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 . . . (2) fails to meet or maintain one or more of the minimum employment standards required by 12 NCAC 09B .0100 for the category of the officer's certification or fails to meet or maintain one or more of the minimum training standards required by 12 NCAC 09B .0200 or 12 NCAC 09B .0400 for the category of the officer's certification[.]

9. 12 NCAC 09B .0101(3) states:

Every criminal justice officer employed by an agency in North Carolina shall . . . (3) be of good moral character pursuant to G.S. 17C-10 and as determined by a thorough background investigation[.]

10. N.C.G.S. § 17C-10 states:

In addition to the requirements of subsection (b) of this section, the Commission, by rules and regulations, shall fix other qualifications for the employment, training, and retention of criminal justice officers including minimum age, education, physical and mental standards, citizenship, good moral character, experience, and such other matters as relate to the competence and reliability of persons to assume and discharge the responsibilities of criminal justice officers, and the Commission shall prescribe the means for presenting evidence of fulfillment of these requirements.

11. 12 NCAC 09A .0205(c)(2) states:

When the Commission suspends or denies the certification of a criminal justice officer, the period of sanction shall be for an indefinite period, but continuing so long as the stated deficiency, infraction, or impairment continues to exist, where the cause of sanction is . . . (2) failure to meet or maintain the minimum standards of employment[.]

12. The party with the burden of proof in a contested case must establish the facts required by N.C.G.S. § 150B-23(a) by a preponderance of the evidence. N.C.G.S. § 150B-29(a). The administrative law judge shall decide the case based upon the preponderance of the evidence. N.C.G.S. § 150B-34(a).

13. The Probable Cause Committee found probable cause existed to deny or suspend Petitioner's law enforcement officer certification because he committed the Class B misdemeanor of "Hit/Run Fail Stop Property Damage" and because he lacked the good moral character required for criminal justice officers.

14. The Probable Cause Committee did not include material misrepresentation as a basis for its finding and, therefore, the evidence concerning this issue is not considered in this Decision.

15. A preponderance of the evidence showed that Petitioner committed the Class B misdemeanor of "Hit/Run Fail Stop Property Damage" which is sufficient to show that Petitioner lacks the good moral character required for criminal justice officers.

16. Petitioner has the burden of proof in the case at bar for Petitioner's law enforcement officer certification. Petitioner failed to show by a preponderance of the evidence that Respondent's proposed suspension or denial of Petitioner's law enforcement officer certification is not supported by substantial evidence in that Petitioner committed the Class B misdemeanor of "Hit/Run Fail Stop Property Damage" and that Petitioner failed to meet or maintain one or more

of the minimum employment standards that every criminal justice officer be of good moral character.

PROPOSAL FOR DECISION

Based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the undersigned Administrative Law Judge recommends Respondent suspend Petitioner's law enforcement officer certification for a period of not less than five (5) years based upon Petitioner's commission of the Class B misdemeanor of "Hit/Run Fail Stop Property Damage" and for an indefinite period because Petitioner lacks the good moral character required of law enforcement officers.

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.

This the 24th day of March, 2014.

Selina M. Brooks
Administrative Law Judge