

STATE OF NORTH CAROLINA  
COUNTY OF DURHAM

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
13DOJ09572

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| STEPHEN JAMES RILEY,<br>Petitioner,<br><br>v.<br><br>NORTH CAROLINA SHERIFFS'<br>EDUCATION AND TRAINING<br>STANDARDS COMMISSION,<br>Respondent. | <b>PROPOSAL FOR DECISION</b> |
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On October 1, 2013, Administrative Law Judge Beecher R. Gray heard this case in Raleigh, North Carolina. This case was heard after Respondent requested, under N.C.G.S. § 150B-40(e), designation of an administrative law judge to preside at the hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes.

### **APPEARANCES**

Petitioner: *Pro Se*

Respondent: Matthew L. Boyatt, Assistant Attorney General  
Attorney for Respondent  
N.C. Department of Justice  
9001 Mail Service Center  
Raleigh, North Carolina 27699-9001

### **ISSUE**

Whether Petitioner possesses the good moral character that is required of sworn justice officers under Respondent's Rules.

### **FINDINGS OF FACT**

1. The parties received notice of hearing by certified mail more than 15 days prior to the hearing, and each stipulated on the record that notice was proper. Petitioner received, by certified mail, the Notification of Probable Cause to Revoke Justice Officer Certification letter, mailed by Respondent on January 2, 2013.

2. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter the "Sheriffs' Commission") has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify justice officers and to deny, revoke, or suspend such certification.
3. 12 NCAC 10B .0301 (a)(8) provides that all justice officers employed or certified in the State of North Carolina shall be of good moral character.
4. 12 NCAC 10B.0204(b)(2) further provides that the Sheriffs' Commission shall revoke, deny, or suspend a justice officer's certification when the Commission finds that the justice officer no longer possesses the good moral character that is required of all sworn justice officers.
5. Petitioner received his Probationary Deputy Sheriff Certification (PR 237045689) from the Sheriffs' Commission on August 6, 2001. Petitioner then received his General Deputy Sheriff Certification (GN 237045689) from the Sheriffs' Commission on September 6, 2002. (R. Ex. 15)
6. Petitioner was employed as a sworn justice officer through the Orange County Sheriff's Office from July 24, 2001 until his separation from that agency on November 16, 2011. (R. Ex. 6)
7. Major Charles Blackwood (hereinafter "Major Blackwood") testified at the administrative hearing. Major Blackwood has over 30 years of law enforcement experience. He began his law enforcement career with the Orange County Sheriff's Office in 1982 and continued to move up through the ranks with that agency until his retirement on December 17, 2012. At the time of his retirement, Major Blackwood was Major of Operations at the Orange County Sheriff's Office. His duties included, but were not limited to, oversight of the jail and transportation division, in addition to liaison to the courts.
8. In November 2011, Major Blackwood was assigned to investigate the possible falsification of agency records by Petitioner. The general essence of the complaint was that Petitioner was completing Vacation Leave Request Forms, wherein he would request "Vacation Leave." Petitioner later would record his time as "Sick Leave" on his 28 Day Cycle Time Sheet. Lieutenant Turner of the Orange County Sheriff's Office observed the discrepancy in Petitioner's time sheets and subsequently questioned the practice, which ultimately triggered the internal investigation.
9. Major Blackwood conducted an audit of Petitioner's Vacation Leave Request Forms and 28 Day Cycle Time Sheets for the period 2009 through 2011. This audit revealed that Petitioner routinely was requesting vacation leave on his Vacation Leave Request Forms. Petitioner later would record the leave as "Sick Leave" on his official 28 Day Cycle Time Sheet. During the period in question, Major Blackwood discovered the following misreporting by Petitioner (R. Ex. 1):

- a. November - December 2008: 12 hours requested as a personal day, but later recorded as Sick Leave on Time Sheet;
  - b. August - September 2009: 24 hours requested as Vacation Leave, but later recorded as Sick Leave on Time Sheet;
  - c. May - June 2010: 36 hours requested as Vacation Leave, but later recorded as Sick Leave on Time Sheet;
  - d. June - July 2010: 24 hours requested as Vacation Leave, but later recorded as Sick Leave on Time Sheet;
  - e. October - November 2010: 19 hours requested as Vacation Leave, but later recorded as Sick Leave on Time Sheet;
  - f. March - April 2011: 36 hours requested as Vacation Leave, but later recorded as Sick Leave on Time Sheet;
  - g. May - June 2011: 48 hours requested as Vacation Leave, but later recorded as Sick Leave on Time Sheet;
  - h. July - August 2011: 24 hours requested as Vacation Leave, but later recorded as Sick Leave on Time Sheet; and
  - i. October - November 2011: 36 hours requested as Vacation Leave, but later recorded as Sick Leave on Time Sheet.
10. Major Blackwood interviewed Petitioner and questioned him regarding the above-referenced deceptive time sheet entries. Petitioner admitted that between 2009 and 2011, Petitioner's practice was to request vacation time on his Vacation Leave Request Forms, and then later record the time as sick time on his 28 Day Cycle Time Sheets. Petitioner admitted that the time off was not because of illness or medical reasons. Petitioner contended that this was common practice and that he was advised that he could do this by Pam Pope in the Human Resources Department of the Orange County Sheriff's Office. Petitioner further stated that other deputies, such as Deputy Hilton, engaged in such recording practices. Major Blackwood interviewed Ms. Pope and Deputy Hilton and could find no evidence that either of these individuals instructed Petitioner to record false and deceptive information on his 28 Day Cycle Time Sheets. Further, Major Blackwood examined the time sheets of Deputy Hilton and could find no such deceptive and false time sheet entries.
  11. In addition to the foregoing, Major Blackwood conducted a random audit of the 4 different squads responsible for Orange County jail oversight, to include Petitioner's squad. That audit revealed that Petitioner's colleagues were completing their Vacation Leave Request Forms and 28 Day Cycle Time Sheets honestly and accurately. Major Blackwood was unable to locate any other cases where an Orange County deputy

requested vacation leave on a Vacation Leave Request Form, but then later recorded that time as sick leave on a 28 Day Cycle Time Sheet.

12. Major Blackwood testified that in his 32 years at the Orange County Sheriff's Office, he never had seen or heard of such a deceptive reporting practice, wherein a deputy would request vacation leave and then later record it as sick leave. Major Blackwood stated this reporting practice was deceptive and untruthful. Such a practice would make it impossible for the chain of command to determine how an employee was taking time off, and would lead to the chain of command relying on false information contained in an agency report.
13. Further, Major Blackwood testified that under no circumstance should a sworn justice officer knowingly record false information on any agency form whatsoever, whether it be an incident report, time sheet, leave request form, or any other agency document that is passed through the chain of command and relied on to be honest and accurate. The core value of all sworn justice officers is unwavering honesty. This must be exhibited at all times by sworn justice officers, and it is a quality we demand of the profession. Assuming, *arguendo*, that Petitioner's colleagues were engaged in similar deceptive recording practices or that Petitioner was "told" to record false information on a time sheet, this does not justify the deceptive practice. As a sworn law enforcement officer, one has a duty to remain honest and truthful at all times. Where, as here, a sworn justice officer knowingly records false information on a law enforcement agency form, that officer no longer possesses the good moral character that is required of a sworn justice officer in the State of North Carolina. Such intentional misreporting of false information cannot be tolerated in the law enforcement profession.
14. Major Blackwood testified regarding the Sheriff's policy on sick leave, in addition to the County's policies on sick leave and vacation leave. In 2008, Orange County Sheriff Lindy Pendergrass issued General Order No. 20040. Under this Order, all employees of the Orange County Sheriff's Office were specifically advised that sick leave only was to be used for illness or medical purposes. (R. Ex. 2)
15. In addition to General Order No. 20040, under the Orange County Personnel Rules and Regulations, sick leave only is authorized for illness and/or medical purposes. The Personnel Rules cautioned employees that any use of sick leave for non-medical purposes was improper and could result in "loss of pay and/or disciplinary action." (R. Ex. 4)
16. Petitioner does not deny that he was given, and also provided, access to General Order No. 20040 and the County's Personnel Rules and Regulations. Petitioner contends that he was too busy at work to review the General Orders issued by the Sheriff and that the Personnel Rules were such that Petitioner was told that some applied to him, and some did not.
17. Major Blackwood testified regarding Orange County's Personnel Rules relating to the taking of sick leave. Major Blackwood stated the policy prohibiting the taking of sick leave for non-medical reasons was long standing, dating back at least a decade. Further,

Major Blackwood stated the Sheriff's General Orders were disseminated down through the ranks and that a deputy with Petitioner's experience would know to read all General Orders issued by the Sheriff. These Orders were contained in written form and were accessible at all times to staff. In addition, command staff periodically reviewed all general orders with staff to ensure that all deputies were current with policies at the Sheriff's Office.

18. Regarding the accumulation of vacation leave, the Orange County Personnel Rules and Regulations provide that an employee may accrue up to 240 hours in vacation leave. In the event the employee is separated from employment, that employee receives a cash payment for all accumulated vacation leave, up to 240 hours. (R. Ex. 3)
19. At the time of Petitioner's separation, Petitioner had accumulated the maximum 240 hours in vacation leave. At separation, Petitioner was paid a lump sum for the accumulated 240 hours vacation. (R. Ex. 5) Petitioner does not dispute that he was paid for the 240 hours of accumulated vacation leave.
20. Major Blackwood testified that Petitioner's practice of requesting vacation leave but then recording sick leave on his 28 Day Cycle Time Sheet resulted in an windfall to Petitioner. At the time of separation, Petitioner would have a cash payout for the maximum 240 hours because Petitioner was not debiting vacation time from his vacation account.
21. Orange County's Personnel Rules regarding accumulation of sick time differed from the accumulation of vacation time. At separation, an employee was NOT paid for accrued sick time. (R. Ex. 4)
22. Major Blackwood testified that Petitioner was separated from the Orange County Sheriff's Office on November 16, 2011. (R. Ex. 6) The separation was designated "At the discretion of the Sheriff." Major Blackwood, however, stated that Petitioner's separation was for cause. Petitioner was separated from the Orange County Sheriff's Office because of the falsification of agency records, as set out in greater detail above. (See also R. Exs. 7-12)
23. Petitioner received timely notification of Respondent's Notice of Probable Cause to Revoke Certification. (R. Ex. 13) Petitioner thereafter requested an administrative hearing. Petitioner testified that he believes he was not engaged in wrongdoing because he was told by "higher ups" that he could request vacation leave and then later record it as sick leave on the 28 Day Cycle Time Sheets. Petitioner testified that the higher up was Pam Pope in the Human Resources Department. Despite this claim, Petitioner admitted that Ms. Pope was not a sworn law enforcement officer and was not in Petitioner's chain of command.

### **CONCLUSIONS OF LAW**

1. Both parties properly are before the Office of Administrative Hearings.

2. Petitioner's practice of requesting vacation leave on a Vacation Leave Request Form and then later recording sick time on a 28 Day Cycle Time Sheet was intentionally deceptive. Petitioner knew at the time he was making these data entries on agency leave forms that they were false and misleading. This intentional and deceptive conduct, whether done one time or multiple times, evidences the individual's lack of good moral character. Such intentional misreporting of information by a sworn officer on an agency form is not, under any circumstances, justifiable.
3. Given the totality of the evidence presented at the administrative hearing, I find that Petitioner no longer possesses the good moral character required of all sworn justice officers in this State. The basis of this finding is that Petitioner knowingly recorded false information on agency leave forms. Petitioner's knowing misrepresentation of information on time sheets was deceptive and resulted in a windfall to Petitioner at the time of his separation, in that Petitioner was being paid for accumulated vacation leave that should have been debited from his vacation account.
4. Respondent's proposed revocation of Petitioner's certification for a lack of good moral character is supported by a preponderance of the evidence.

### **PROPOSAL FOR DECISION**

Based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the undersigned finds that Respondent's decision to revoke Petitioner's certification because of Petitioner's failure to maintain the good moral character that is required of sworn justice officers under 12 NCAC 10B .0300 is supported by the evidence and is AFFIRMED.

### **NOTICE AND ORDER**

The North Carolina Sheriffs' Education and Training Standards Commission is the agency that will make the Final Decision in this contested case. As the final decision-maker, that agency is required to give each party an opportunity to file exceptions to this proposal for decision, to submit proposed findings of fact, and to present oral and written arguments to the agency pursuant to N.C. Gen. Stat. § 150B-40(e).

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

This the 30th day of October, 2013.

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Beecher R. Gray  
Administrative Law Judge