

STATE OF NORTH CAROLINA
COUNTY OF MOORE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13DOJ11693

WILLIAM DALE AARONSON PETITIONER, V. N C SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION RESPONDENT.	PROPOSAL FOR DECISION
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On November 26, 2013, Administrative Law Judge J. Randall May heard this case in High Point, North Carolina. This case was heard after Respondent requested, pursuant to N.C.G.S. § 150B-40(e), the designation of an administrative law judge to preside at the hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes.

APPEARANCES

Petitioner: William Dale Aaronson, *Pro Se*
10561 Doe Run Drive
Marston, North Carolina 28363

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

ISSUES

Has the Petitioner committed or been convicted of any combination of four (4) or more crimes or unlawful acts defined as either Class A or Class B misdemeanors pursuant to the Commissions' Rules, such that Petitioner's application for certification is subject to denial?

Has Petitioner committed the felony offense of Financial Card Fraud?

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 that the Petitioner

received by mail the proposed Denial of Justice Officer's Certification letter mailed by Respondent Sheriffs' Commission on March 20, 2013.

2. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter referred to as the "Commission" or "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. Petitioner is an applicant for justice officer certification through the Scotland County Sheriff's Office.

4. 12 NCAC 10B. 0204(d)(5) states the Sheriffs' Commission may deny the certification of a justice officer when the Commission finds that the applicant has committed or been convicted of:

(5) Any combination of four or more crimes or unlawful acts defined in 12 NCAC 10B .0103 (10)(a) as a Class A misdemeanor or defined in 12 NCAC 10B .0103 (10)(b) as a Class B misdemeanor regardless of the date of commission or conviction.

5. 12 NCAC 10B. 0204(a)(1) further provides:

(a) The Commission shall revoke or deny the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer has committed or been convicted of:

(1) a felony

6. The Petitioner testified at the administrative hearing and does not dispute that he has been convicted of six (6) misdemeanor offenses, as set out in greater detail below.

7. On January 27, 1998, Petitioner was convicted of misdemeanor worthless check in violation of N.C.G.S. § 14-107 (d)(1) in Richmond County, North Carolina; Case No. 1996 CR 005785. (Respondent's Exhibit 3)

8. On August 8, 1996, Petitioner was convicted of misdemeanor worthless check in violation of N.C.G.S. § 14-107 (d)(1) in Richmond County, North Carolina; Case No. 1996 CR 005043. (Respondent's Exhibit 3)

9. On August 8, 1996, Petitioner was convicted of misdemeanor assault in violation of N.C.G.S. § 14-33(a) in Richmond County, North Carolina; Case No. 1996 CR 005040. (Respondent's Exhibit 3)

10. On August 8, 1996, Petitioner was also convicted of misdemeanor carrying a concealed gun in violation of N.C.G.S. § 14-269 (a1) in Richmond County, North Carolina; Case No. 1996 CR 005041. (Respondent's Exhibit 3)

11. On August 8, 1996, Petitioner was also convicted of a second count of misdemeanor assault in violation of N.C.G.S. § 14-33 (a) in Richmond County, North Carolina; Case No. 1996 CR 005042. (Respondent's Exhibit 3)

12. On April 8, 1994, Petitioner was convicted of misdemeanor financial card fraud in violation of N.C.G.S. § 14-113.13 in Forsyth County, North Carolina; Case No. 1994 CR 001384. (Respondent's Exhibit 3)

13. Petitioner was ordered by the court to pay restitution in the amount of \$800.00 as a result of Petitioner's misdemeanor financial card fraud conviction in 1994 CR 001384. In addition, Petitioner was placed on probation for 2 years and was ordered to pay attorney's fees and to obtain his high school diploma. Petitioner paid the \$800.00 in restitution and complied with the court's remaining order.

14. Pursuant to 12 NCAC 10B .0103 (10) (a), and the Class B Misdemeanor Manual adopted by the Respondent, the criminal offenses of issuing a worthless check, simple assault, and carrying a concealed gun are each classified as Class A misdemeanors.

15. Petitioner has been convicted of five (5) Class A misdemeanors: 1) misdemeanor worthless check, 1996 CR 005785; 2) misdemeanor worthless check 1996 CR 005043; 3) simple assault 1996 CR 005040; 4) carrying a concealed gun, 1996 CR 005041; and 5) simple assault, 1996 CR 005042.

16. Pursuant to 12 NCAC 10B .0103 (10) (b), and the Class B Misdemeanor Manual adopted by the Respondent, the criminal offense of misdemeanor financial card fraud in violation of N.C.G.S. § 14-133.13 constitutes a Class B misdemeanor. The record establishes that Petitioner has been convicted of the Class B misdemeanor offense of financial card fraud in case No. 1994 CR 001384.

17. Petitioner testified regarding the two simple assault convictions and the carrying a concealed gun conviction set out above. These offenses arose out of the same incident. Petitioner and his friends were fooling around and were throwing glass bottles at a sign. Petitioner stated two (2) by standards were struck by glass as the bottles shattered. When the police arrived, Petitioner was found to be in possession of a concealed handgun. Petitioner and his friends were charged criminally. Petitioner accepted responsibility for his actions and pleaded guilty when he appeared in court. The criminal charges against Petitioner's friends were later dismissed when the victims failed to appear in court on the second setting. Petitioner was 19 years old when these events occurred.

18. Regarding the two (2) worthless check convictions, Petitioner believes these were an honest mistake on his part. Petitioner did not have funds sufficient to cover the checks when Petitioner issued them. Petitioner accepted responsibility for his actions and paid restitution in

full when he pleaded guilty to these two (2) charges. Petitioner was also 19 years old when he issued the worthless checks.

19. With regard to the financial card fraud, Petitioner was honest and forthright regarding his unlawful activity. In August of 1993 Petitioner visited his step- grandparents, Anthony and June Pierce, in Kernersville, North Carolina. Petitioner was staying with them for approximately two (2) weeks. During this visit, June Pierce showed Petitioner how to use a debit card. Petitioner admitted that the purpose of this was to show Petitioner how the card worked. Petitioner was not given permission by either June or Anthony Pierce to take the ATM bank card or to otherwise withdraw funds with the ATM bank card.

20. On August 19, 1993, Petitioner snuck his step-grandparent's ATM bank card from a dresser in their home. Petitioner then went to the bank on his bicycle and proceeded to withdraw \$300.00 without the knowledge or consent of either Anthony or June Pierce. Petitioner returned the card to the dresser undetected. At no point during his visit did Petitioner let either June or Anthony Pierce know that Petitioner had taken their ATM bank card, or that he had fraudulently withdrawn \$300.00 from their account. Petitioner does not recall what he spent the money on specifically, but Petitioner does admit that he used the money for various personal items and that he spent all the money prior to getting caught.

21. When Petitioner returned home from his August 1993 trip to visit his step-grandparents, Petitioner concealed from his mother that he had fraudulently withdrawn \$300.00 from Anthony and June Pierce's bank account without their knowledge or consent. The Petitioner continued to spend the \$300.00 he stole after his return home and made no effort to disclose this to his parents or step-grandparents.

22. Five (5) months later, Petitioner visited Anthony and June Pierce again in Kernersville during the month of January 1994. On January 3, 1994, Petitioner snuck his step-grandparent's ATM bank card for the second time without the knowledge or consent of either June or Anthony Pierce. Petitioner went to the bank on his bicycle and withdrew \$500.00 from the Pierce's bank account without the knowledge or consent of either June or Anthony Pierce. Petitioner returned the ATM bank card to the dresser undetected. At no point during his January 1994 visit did Petitioner let either June or Anthony Pierce know that Petitioner had taken their ATM bank card, or that he had fraudulently withdrawn \$500.00 from their account. Petitioner does not recall what he spent the \$500.00 on specifically, but Petitioner does admit that he used the money for various personal items and that he spent all the money prior to getting caught.

23. When Petitioner returned home from his January 1994 visit at his step-grandparents, Petitioner concealed from his mother that he had fraudulently withdrawn \$500.00 from Anthony and June Pierce's bank account without their knowledge or consent. The Petitioner continued to spend the \$500.00 he stole after his return home and made no effort to disclose this to his parents or step-grandparents.

24. At some point following his January 1994 visit with his step-grandparents, Petitioner left for Job Corps in Kentucky. It was not until his return home from Job Corps that Petitioner learned that he had been caught stealing from his step-grandparents. Petitioner's step-

grandparents noticed the discrepancy in their bank account on the second \$500.00 transaction, and were able to identify Petitioner as the one who took the money through the video surveillance from the ATM machine at their bank.

25. Petitioner admits that he stole from his step-grandparents. Petitioner admits that he stole a total of \$800.00 through two (2) separate ATM transactions. Petitioner did not have the consent of Anthony and/or June Pierce when these transactions were made, or any time thereafter. Petitioner testified that Anthony Pierce pursued the criminal charges in order to teach Petitioner a life lesson.

26. As a condition of Petitioner's misdemeanor financial card fraud conviction, Petitioner was ordered to pay restitution to his step-grandparents in the amount of \$800.00 for the two (2) fraudulent bank card withdrawals on August 19, 1993 and January 3, 1994.

27. Petitioner regrets his actions and is remorseful that he stole \$800.00 from his step-grandparents in two fraudulent bank card transactions. Petitioner was 17 years old when he engaged in this unlawful activity. At that time, Petitioner was living at home with his mother. Petitioner did not pay rent at that time and Petitioner had no other expenses such as a car payment or insurance premiums. Petitioner no longer has contact with his step-grandparents.

28. Petitioner committed the felony offense of financial card fraud within the meaning of N.C.G.S. § 14-133.13. Petitioner took the Pierce's ATM bank card on August 19, 1993 and again on January 3, 1994 without their knowledge and without their consent. Within a six-month period, Petitioner used the ATM bank card at a bank ATM on the two above-referenced dates to fraudulently withdraw a total of \$800.00. Petitioner took the money and converted it to his own personal use without the knowledge or consent of the cardholders, Anthony and June Pierce. Pursuant to N.C.G.S. § 133.13 and N.C.G.S. § 113.17(b), Petitioner's fraudulent withdrawals constitute a felony because the amount of the two transactions was in excess of \$500.00.

29. Despite Petitioner's criminal record, Petitioner has been employed by the Scotland County Sheriff's Office in a probationary status for approximately 16 months. At the administrative hearing, Petitioner introduced into the record a letter of support from Scotland County Sheriff Shep Jones. Sheriff Jones believes Petitioner is an excellent and hard-working officer who has provided exemplary service to the Sheriff's Office. Sheriff Jones is hopeful Petitioner can resolve his issues with the Sheriffs' Commission in order to continue his service with the Scotland County Sheriff's Office.

30. The Petitioner also has previous law enforcement experience. Petitioner has previously received certification through the North Carolina Criminal Justice Education and Training Standards Commission. Petitioner worked for the Wagram Police Department for approximately four (4) years. Petitioner introduced into the record a letter of support from Chief of Police K. Locklear. Chief Locklear characterized Petitioner as an exceptional police officer and recommended that the Sheriffs' Commission issue Petitioner his General Certification in order to become a sworn deputy.

31. Based on the evidence presented at the administrative hearing, including Petitioner's sworn testimony and the exhibits introduced into the record, this court finds that Petitioner has been convicted of four (4) or more crimes or unlawful acts defined as either Class A or Class B misdemeanors pursuant to the Commission's Rules, such that Petitioner's application for certification is subject to denial pursuant to 12 NCAC 10B .0204 (d)(5) and 12 NCAC 10B .0205. The court further finds that Petitioner committed the felony offense of financial card fraud within the meaning of N.C.G.S. § 14-113.13, such that Petitioner's application for certification is subject to denial pursuant to 12 NCAC 10B .0204 (a)(1) and 12 NCAC 10B .0205.

CONCLUSIONS OF LAW

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, both parties received notice of hearing, and that the Petitioner received by mail the proposed Denial of Justice Officer's Certification letter mailed by Respondent Sheriffs' Commission on March 20, 2013.

2. Pursuant to 12 NCAC 10B. 0204(a)(1), the Commission shall deny the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer has committed or been convicted of a felony.

3. Pursuant to N.C.G.S. § 14-113.13, an individual commits the felony offense of financial transaction card fraud when he obtains money, with the intent to defraud the lawful card holder, by representing that he is the lawful holder of a financial transaction card when in fact he does not have the consent of the lawful card holder and is not authorized to withdraw the funds. If within a six (6) month period the individual unlawfully withdraws over \$500.00, the offense is classified as a Class I felony pursuant to N.C.G.S. § 14-113.13 and N.C.G.S. § 14-113.17(b).

In the case at bar, Petitioner used the ATM bank card of Anthony and June Pierce without their knowledge or consent to fraudulently withdraw a total of \$800.00 from the bank account of Anthony and June Pierce within a 5 month period. On August 19, 1993, Petitioner fraudulently withdrew \$300.00 from the Pierce's bank account without their knowledge or consent. Petitioner spent this money on himself and made no effort to disclose to his step-grandparents that he had stolen money from them. On January 3, 1994, Petitioner again fraudulently withdrew \$500.00 from the Pierce's bank account without their knowledge or consent. Petitioner again spent this money on himself and made no effort to disclose to his step-grandparents that he had stolen money from them. On each occasion, Petitioner snuck the Pierce's ATM bank card from a dresser within the Pierce home with the intent to fraudulently withdraw money without permission for his personal use. Petitioner knew he was not entitled to these funds. Petitioner admits that he stole from his step-grandparents and is remorseful for his action. The record establishes Petitioner committed the class I felony offense of financial transaction card fraud within the meaning of N.C.G.S. § 14-113.13 and Petitioner's application for certification should therefore be denied pursuant to 12 NCAC 10B. 0204(a)(1).

4. Pursuant to 12 NCAC 10B .0204(d)(5), the Commission may revoke, suspend, or deny the certification of a justice officer when the Commission finds that the applicant for certification or certified officer has committed or been convicted of:

(5) Any combination of four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(a) as a Class A misdemeanor or defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor regardless of the date of commission or conviction.

5. Pursuant to 12 NCAC 10B .0103(2), “convicted” or “conviction” means and includes, for purposes of that Chapter, the entry of (a) a plea of guilty; (b) a verdict or finding of guilt by a jury, judge, magistrate, or other duly constituted, established, and recognized adjudicating body, tribunal, or official, either civilian or military; or (c) a plea of no contest, nolo contendere, or the equivalent.

6. Pursuant to 12 NCAC 10B .0205(3)(d), when the Commission denies the certification of a 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 commission or conviction of offenses as specified in 12 NCAC 10B .0204(d)(5).

7. The criminal offenses of simple assault under N.C.G.S. § 14-33 (a), carrying a concealed gun under N.C.G.S. § 14-269 (a1), and misdemeanor worthless check under N.C.G.S. § 14-107 (d)(1), are each classified as Class A misdemeanors pursuant to 12 NCAC 10B .0103 (10)(a) and the Class B Misdemeanor Manual adopted by Respondent. The record in this case establishes that Petitioner has been convicted of five (5) separate Class A misdemeanors as follows: 1) misdemeanor worthless check, 1996 CR 005785; 2) misdemeanor worthless check 1996 CR 005043; 3) simple assault 1996 CR 005040; 4) carrying a concealed gun, 1996 CR 005041; and 5) simple assault, 1996 CR 005042.

8. The criminal offense of misdemeanor financial card fraud under N.C.G.S. § 14-113.13 is classified as a Class B misdemeanor pursuant to 12 NCAC 10B .0103 (10)(b) and the Class B Misdemeanor Manual adopted by the Respondent. The record in this case establishes that Petitioner was convicted of misdemeanor financial card fraud on April 8, 1994; 1994 CR 001384.

9. Petitioner has a total of six (6) criminal convictions classified as Class A and/or Class B misdemeanors pursuant to the Commission’s Rules, as set out in greater detail above. Petitioner’s application for certification is therefore subject to denial pursuant to 12 NCAC 10B .0204(d)(5). All convictions occurred over ten (10) years ago.

10. Pursuant to 12 NCAC 10B .0205, the Respondent may, in its discretion, reduce or suspend the period of sanction imposed for the Petitioner’s record of a combination of four or more Class A or Class B misdemeanor convictions “when extenuating circumstances brought out at the administrative hearing warrant such a reduction or suspension.”

PROPOSAL FOR DECISION

Based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the undersigned finds that the Petitioner has committed the felony offense of financial transaction card fraud and has been convicted of six (6) misdemeanor offenses as set out in greater detail above. As to the felony offense [12 NCAC 10B. 0204(a)(1)] and because of the extenuating circumstances regarding Petitioner's relationship with the victims (his grandparents); Petitioner's age (17 years of age) at the time of the offense (1993); and his unblemished career as a police officer; it is RECOMMENDED that the Commission consider waiving the requirement of a permanent suspension and, instead, SUSPEND his suspension with a term of probation.

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 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 7th day of January, 2014.

J. Randall May
Administrative Law Judge