

**IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13 DOJ 13549**

PROPOSAL FOR DECISION

-1-

ISSUE

Is Respondent's proposed denial of Petitioner's Justice Officer Certification for the commission of the Class B misdemeanor offenses of filing a false police report and impersonating an officer supported by a preponderance of the evidence?

EXHIBITS

Respondent's Exhibits 1-9 were introduced and admitted.

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 by a preponderance of the evidence. In making these Findings of Fact, the Undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to the demeanor of the witnesses, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable and whether the testimony is consistent with all other believable evidence in this case.

FINDINGS OF FACT

1. Both parties received Notice of Hearing, and the Petitioner received the Notification of Probable Cause to Deny Justice Officer Certification letter mailed by the Respondent on March 20, 2013. (Respondent's Exhibit 4)
2. The North Carolina Sheriffs' Education and Training Standards 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 revoke, suspend, or deny such certification.
3. Pursuant to 12 NCAC 10B .0204(d)(2), the Commission may revoke, suspend, or deny the certification of a justice officer when the Commission finds that the applicant for certification has committed or been convicted of:

a crime or unlawful act defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor within the five year period prior to date of appointment.
4. The offenses of misdemeanor filing a false police report in violation of North Carolina General Statute § 14-225 and impersonating a police officer in violation of North

Carolina General Statute § 14-277 constitute Class B Misdemeanors pursuant to 12 NCAC 10B .0103(10)(b) and the Class B Misdemeanor Manual. (See N.C.G.S. §§ 14-225 and 14-277(a)(1) and Respondent's Exhibit 9)

5. The Probable Cause Committee on behalf of the Commission met and found that probable cause existed that Petitioner had committed the offenses of filing a false police report and impersonating a police officer within the five year period prior to November 22, 2010, the date of his appointment with the Vance County Sheriff's Office. Notice of this decision was mailed by certified mail, to Petitioner on or about March 20, 2013 and signed for by Petitioner on March 25, 2013. (Respondent's Exhibits 1 and 4)
6. Petitioner applied through the North Carolina Sheriffs' Education and Training Standards Commission to be certified as a justice officer with the Vance County Sheriff's Office, his date of appointment being listed as November 22, 2010. Petitioner was not employed by the Vance County Sheriff's Office prior to his date of appointment.
7. On or about March 30, 2010, Petitioner called 911 to report that his second floor apartment at 913 Applewood Lane, in Fayetteville, North Carolina, had been broken into. Petitioner testified that when he arrived home, the door and all windows were locked.
8. Officer Mandy Blumer, currently employed as a Detective with the Laurinburg Police Department and formerly employed as a patrol officer with the Fayetteville Police Department, responded to that 911 call.
9. Officer Blumer, a law enforcement officer now for eleven years, indicated that there were no signs of forced entry at the apartment.
10. Petitioner testified that he believed his apartment had been broken into because there were food items, such as soda, honey buns and packages of pork and beef, on his counter and in the freezer that were not items that he would eat. He also mentioned that some of his military paperwork was missing.
11. Officer Blumer testified that when she arrived, she encountered Petitioner and Tionna Melendez. She further indicated the following in her report and/or her testimony:
 - a. Officer Blumer documented in her police report that Petitioner had left town in December 2009 and left a key for his apartment with his friend Tionna Melendez who was present at the apartment upon Officer Blumer's arrival. Petitioner also told Officer Blumer that while he was away, he loaned his truck to Ms. Melendez and she wrecked it. Petitioner requested Ms. Melendez to check on his apartment while he was away attending a funeral.
 - b. Officer Blumer intended on having a crime scene technician check for fingerprints but opted not to do so based on Petitioner and Ms. Melendez' statements that they had touched the items in the apartment.

- c. Petitioner said that a friend named Janie Morris contacted him while he was away, to tell him that she had been at the apartment and there were people inside. Petitioner did not call the police after receiving this information. Prior to leaving the scene, Officer Blumer was able to reach Janie Morris by telephone. During that conversation, Ms. Morris indicated that she had not informed Petitioner that there were people in his apartment. Ms. Morris told Officer Blumer that Petitioner was “‘down on his luck’ lately and they have all been trying to help him in the family, but that he and ‘that girl’ were telling a complete lie.”
 - d. Detective Blumer in her report and testimony indicated that Petitioner was unable to answer questions and became nervous. She further indicated that Ms. Melendez interjected frequently when Detective Blumer asked questions of the Petitioner and repeatedly suggested that the culprit was Petitioner’s ex-wife.
 - e. Ms. Melendez told officers at the scene that she had lost Petitioner’s apartment key for about a month but later found it.
 - f. Detective Blumer indicated that she obtained the information contained in her police report regarding the victim information including name, home address and employer information directly from the Petitioner. The employer information provided by Petitioner, at the time he reported the break in at his apartment, was the Vance County Sheriff’s Office.
 - g. Officer Blumer obtained a warrant for filing a false police report against Petitioner and Ms. Melendez. The charge against the Petitioner was dismissed. Officer Blumer was never contacted by the Cumberland County District Attorney’s Office about the charge or dismissal.
- 12. Petitioner testified that he had not given Ms. Melendez or anyone else a key to his apartment. Petitioner in his testimony stated Ms. Melendez was calm and sat on the couch during the entire encounter. In addition, Petitioner denied telling Detective Blumer that he had touched the items in the apartment.
 - 13. Petitioner testified that he had been in Iraq and had military “stuff” in his apartment that was missing. Petitioner testified that it looked like someone had “jimmied” the door.
 - 14. Petitioner prepared a typewritten statement concerning this incident that he attached to his request for hearing sent to Ms. Julia Lohman, his response to the Order for Prehearing Statements filed in this case, and his response to the Respondent’s First Set of Interrogatories. (Respondent’s Exhibits 5-7)
 - 15. In this typewritten statement, Petitioner indicated that he “noticed that his apartment had been entered and items were all over the floor. I called 911, they came to my apartment conducted checks and tried to get fingerprints but could not.”
 - 16. Petitioner indicated the following in his responses to Respondent’s First Set of Interrogatories, Requests for Admission and Requests for Production of Documents:

- a. He was not employed with the Vance County Sheriff's Office until November 2010, after he filed the police report concerning the alleged break in of his apartment earlier in March 2010. He completed the paperwork for his application including the personal history statement form in September of 2010 and the Report of Appointment in November 2010. (Request for Admission 1-3, Respondent's Exhibit 7 and Exhibits 1-2)
 - b. He admitted to providing information to Officer Blumer regarding his name, address, phone number, and employer information. Although he denied telling Officer Blumer that he worked for the Vance County Sheriff's Office, he admitted that he told her that he "was seeking employment with the Vance County Sheriff's Office. (Interrogatory 1, Respondent Exhibit 7)
17. Petitioner testified that he enjoyed his work with the Vance County Sheriff's Office.

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 certain portions of the foregoing Findings of Fact constitute mixed issues of law and fact, such Findings of Fact shall be deemed incorporated herein by reference as Conclusions of Law. A court need not make findings as to every fact, which arises from the evidence, and need only find those facts that are material to the settlement of the dispute. *Flanders v. Gabriel*, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612, *aff'd*, 335 N.C. 234, 436 S.E.2d 588 (1993).
2. The North Carolina Sheriffs' Education and Training Standards Commission has the authority granted under Chapter 17E of the 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. Pursuant to 12 NCAC 10B .0204(d)(2), the Commission may revoke, deny, or suspend the certification of a justice officer when the Commission finds that the applicant for certification has committed or been convicted of a crime or unlawful act defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor within the five year period prior to the date of appointment.

4. Pursuant to 12 NCAC 10B .0103(10)(b)(i), a Class B Misdemeanor is defined in pertinent part as:
 - (i) an act committed or omitted in violation of any common law, criminal statute, or criminal traffic code of this state which 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 and shall automatically include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6.
5. Pursuant to N.C.G.S. § 14-225, 12 NCAC 10B .0103(10)(b) and the Class B Misdemeanor Manual adopted by the Respondent, filing a false police report in violation of North Carolina General Statute § 14-225 constitutes a Class B misdemeanor.
6. Pursuant to N.C.G.S. § 14-277, 12 NCAC 10B .0103(10)(b) and the Class B Misdemeanor Manual adopted by the Respondent, the crime of misdemeanor impersonation of a law enforcement officer in violation of North Carolina General Statute § 14-277 constitutes a Class B misdemeanor.
7. Petitioner bears the burden of proof on the issues. *Britthaven v. N.C. Dept. of Human Resources*, 118 N.C. App. 379, 382, 455 S.E. 2d 455, 461, *rev. den.*, 341 N.C. 418, 461 S.E. 2d 754 (1995). To meet this burden, Petitioner must show that Respondent substantially prejudiced its rights and exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule.
8. Officer Blumer’s testimony and report is reasonable and consistent with the totality of all other evidence in this case. Based on Officer Blumer’s testimony and or report, including information from Janie Morris that Petitioner was being untruthful about her involvement with this incident, and that Ms. Melendez admitted she had a key to Petitioner’s apartment, there is credible evidence that Petitioner committed the offense of filing a false police report. Based on Officer Blumer’s testimony and detailed report, there is credible evidence that Petitioner relayed to her that he worked for the Vance County Sheriff’s Office.
9. Under the controlling North Carolina statutes and rules, and the current case law, Petitioner failed in his burden of proof regarding Respondent’s proposed denial of Petitioner’s justice officer certification.

BASED UPON the foregoing Findings of Fact and Conclusions of Law the Undersigned makes the following Proposal for Decision.

PROPOSAL FOR DECISION

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

Based on those conclusions and the facts in this case, the Undersigned holds that the Petitioner has failed to carry his burden of proof by a greater weight of the evidence that Respondent exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule. The finder of fact cannot properly act upon the weight of evidence, in favor of the one having the *onus*, unless it overbear, in some degree, the weight upon the other side. The weight of Petitioner's evidence does not overbear in that degree required by law the weight of evidence of Respondent and as such the decisions of the Probable Cause Committee of North Carolina Sheriffs' Education and Training Standards Commission must be and are hereby affirmed.

NOTICE

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

A copy of the final agency decision or order shall be served upon each party personally or by certified mail addresses to the party at the latest address given by the party to the agency and a copy shall be furnished to his attorney of record. N.C.G.S. § 150B-42(a). It is requested that the agency furnish a copy to the Office of Administrative Hearings.

IT IS SO ORDERED.

This is the 15th day of January, 2014.

Augustus B. Elkins II
Administrative Law Judge