

**IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13 DOJ 15365**

PROPOSAL FOR DECISION

APPEARANCES

ISSUE

Did Respondent properly deny or suspend Petitioner's law enforcement officer certification because Petitioner failed to meet or maintain one of the minimum employment standards in that Petitioner lacked the good moral character required for every criminal justice officer?

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 Facts, 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 interest, 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.

RULES

12 NCAC 09A .0204(b)(2)
12 NCAC 09B .0101(3)
12 NCAC 09A .0205(c)(2)
N.C.G.S. § 17C-10

EXHIBITS

Respondent's exhibits 1-28 were introduced and admitted.

FINDINGS OF FACT

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, both parties stipulated to Notice of Hearing, and Petitioner received the notification of Proposed Denial/Suspension of Law Enforcement Officer Certification through a letter mailed by Respondent on June 14, 2013. (Respondent's Exhibit 26)
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)(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[.]"
4. 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[.]"

5. 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[.]”
6. 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.”
7. On January 15, 2009, the North Carolina Criminal Justice Education and Training Standards Commission (“Respondent”) issued a Probationary Certification to Marshall Letitus Wiley (“Petitioner”). (Respondent’s exhibit 1)
8. On January 13, 2009, Petitioner submitted a Report of Appointment Form F-5A to Respondent for employment with the Shelby Police Department. (Respondent’s exhibit 4)
9. Chiquita Lockett Wiley (hereinafter “Ms. Lockett”) and Petitioner were married for four years from February 2006 through June 2010. Their divorce was finalized in February 2012. She has two children. Petitioner knows Ms. Lockett’s eleven-year-old son.
10. In September 2009, Petitioner and Ms. Lockett were arguing. During the argument, Petitioner grabbed a cell phone out of her hand and scratched her face. She called 911, and the Shelby Police Department responded. She did not take out a warrant for arrest, but that law enforcement officers took pictures of her face.
11. On October 12, 2009, Petitioner received a written warning while employed with the Shelby Police Department because of “[a]cts during or outside of duty hours which are incompatible with Responsible public.” (Respondent’s exhibit 5) The factual basis supporting this warning was that on September 15, 2009, Petitioner returned to his residence after being advised not to return to his residence because he knew that an argument would ensue with his wife, Ms. Lockett, that he did return to his residence, that an argument ensued, and that he jerked a telephone away from his wife and scratched her face. Petitioner did not grieve this warning. Petitioner also admitted that he grabbed the telephone from her and scratched her. (Respondent’s exhibit 26) Petitioner received one day off of work without pay, and was required to attend sessions for anger management and marital issues.
12. On January 15, 2010, Respondent issued a General Certification to Petitioner. (Respondent’s exhibit 2)

13. On February 7, 2010, Petitioner received a written warning while employed with the Shelby Police Department because of excessive or inappropriate use of meal and/or work breaks. (Respondent's exhibit 6) The factual basis supporting this warning was that on August 15, 2009, he was found to be sleeping on duty and received a warning. Then, on January 29, 2010, he was found to be sleeping on duty a second time. Petitioner did not grieve this warning.
14. On September 29, 2010, Petitioner received an oral warning and a written warning while employed with the Shelby Police Department because of acts during or outside of duty hours which are incompatible with responsible public service. (Respondent's exhibit 7) The factual basis supporting this warning was that his driver's license was suspended. In order to be employed as a police officer with the City of Shelby, all officers must have an active driver's license. Petitioner's driver's license was suspended for failure to deposit security where he failed to make payments on a judgment from a motor vehicle accident. Petitioner did not grieve this warning.
15. On May 19, 2011, Petitioner assaulted Ms. Lockett. Petitioner arrived at her residence between 5pm and 7pm while she was in her bedroom. Petitioner entered the bedroom, and he gave money to her. Petitioner became upset with Ms. Lockett. Petitioner charged at Ms. Lockett to try to get the money back. The money was located on her wheelchair. Petitioner grabbed her hand and twisted it around her back to try to get the money back. Ms. Lockett's son was in the room and told Petitioner to stop. Petitioner then left her residence. Ms. Lockett went to the magistrate's office in Gaston County and took out a warrant the next day. She did not take out a warrant that day because her sister was her only means of transportation, and her sister was not home that night.
16. On May 20, 2011, a warrant for arrest was issued against Petitioner alleging that he did "assault and strike Chiquita Lockett Wiley, a handicapped person, by 'jumping on [her] and with force bending and gripping [her] hands while twisting them behind [her] back.'" (Respondent's exhibit 8) Ms. Lockett alleged that Petitioner "came over to [her] house . . . to bring [her] some money we both had a disagreement about him keeping my son in July. [Petitioner] was very angry in rage he cursing me out violently in front of my son then he saw that I still had the money in my hand that he brought so he jumped on me with force bending and gripping me." (Respondent's exhibit 9)
17. On May 20, 2011, Ms. Lockett went to the magistrate's office in Gaston County. Gastonia Police Department Officer J.L. Stamey responded to Ms. Lockett's report of assault. (Respondent's exhibit 27) Officer Stamey met Ms. Lockett at the magistrate's office around 8:00 a.m. His report stated that Ms. Lockett's ex-boyfriend came to her apartment and gave her some money. Petitioner became angry, and they argued. Petitioner wanted his money back, and he grabbed her hand and arm and pulled it behind her back.
18. On or about May 31, 2011, the Shelby Police Department Lieutenant Brad Fraser conducted an internal investigation concerning Petitioner's assault on a handicapped person charge. (Respondent's exhibit 10) Lieutenant Fraser spoke with Ms. Lockett,

Petitioner, Ms. Lockett's son, and polygraph examiner Mr. Kenneth Andrews of Special Investigative Services. (Respondent's exhibit 11) Ms. Lockett stated that she and Petitioner spoke in her bedroom. Petitioner placed approximately \$65.00 on her wheelchair. An argument ensued, and she reached for the money. Petitioner pushed her down on the bed, and he bent her arm behind her back to take the money. Petitioner stated that he placed the money on her wheelchair. Petitioner denied striking her and forcing her hands behind her back. Ms. Lockett's son stated that he was in the room when the incident occurred. Her son saw Petitioner grab Ms. Lockett's arm and place it behind her back while she was on the bed. Ms. Lockett's son stated he yelled for Petitioner to stop, and he did. Mr. Andrews stated that Petitioner's polygraph results were inconclusive, and that Petitioner stated that he never entered the bedroom on the date of the incident.

19. On August 4, 2011, Petitioner received a written warning while employed with the Shelby Police Department because of acts during or outside of duty hours which are incompatible with responsible public service. (Respondent's exhibit 14) The factual basis that supported Petitioner's written warning was his warrant for arrest for assault on a handicapped person and that through his own admissions, a verbal altercation escalated to an inappropriate level with Ms. Lockett in the presence of young children.
20. On September 23, 2011, October 15, 2011, June 1, 2012, and on or about July 9, 2012, Petitioner rented a vehicle from Enterprise Leasing Company. (Respondent's exhibit 17) All four contracts stated that Petitioner agreed that no other drivers were permitted to drive the vehicles, and that the vehicles will only be driven in North Carolina and South Carolina.
21. On July 10, 2012, law enforcement officers found one of the vehicles rented by Petitioner from Enterprise. (Respondent's exhibit 18) The vehicle was located at a residence at 514 Porter Street and law enforcement officers had responded to complaints of drug activity involving that residence. An individual named Navor Williams was found walking to the back of the truck and looking into the bed area. After a K-9 indicated on the driver door of the vehicle, officers located 28 grams of marijuana in the door on the driver's side. Officers also located \$934.00 in cash, mail belonging to Mr. Williams, a billfold containing credit cards in Mr. Williams' name, and other identification.
22. Shelby Police Department Captain Rick Stafford conducted an internal investigation. During this investigation, Petitioner admitted that he had rented the vehicle for Mr. Williams, that he and Mr. Williams were friends, and that he rented the vehicle for Mr. Williams because he knew that he could get him a discount on the rental. (Respondent's exhibit 18) Petitioner also admitted that he rented the vehicle for Mr. Williams knowing that Mr. Williams would drive the vehicle to Florida. Petitioner admitted that he rented vehicles for Mr. Williams five times from Enterprise. Petitioner admitted that Mr. Williams asked him to rent the vehicle for him because he could get a discount for renting a vehicle because Petitioner is a law enforcement officer. Petitioner admitted that he had known Mr. Williams approximately ten years. Petitioner also admitted that Mr. Williams had loaned him money in the past, including \$30 or \$40. (Respondent's exhibit

- 22) Petitioner also admitted that he had arrested Mr. Williams in the past for failure to pay child support. (Respondent's exhibit 27)
23. Captain Stafford concluded his internal investigation by stating that:
- [Petitioner] did in fact violate the two departmental policies mentioned above. From his own statement [Petitioner] admits to obtaining at least five of the six vehicle rentals for Mr. Navor Williams because he could get a discount. From reviewing the four contracts we have in hand, it is in my opinion that [Petitioner] also defrauded Enterprise Rent-A-Car in that he signed the contracts indicating that only he would be operating the vehicles. He also indicated in the contracts that the vehicles would not be operated outside North and South Carolina. In Officer Wiley's interview he admitted that he knew the vehicles were going to be driven by Mr. Williams to New Jersey, Florida, and Atlanta, Ga. [Petitioner] also indicated in his interview that he had known Mr. Williams for approximately ten years. From his own statement as well as our departmental records [Petitioner] arrested Mr. Williams on a warrant on December 8, 2010 for failure to comply. Mr. Williams posted a cash bond in the amount of \$428.00. [Petitioner] admits in his interview that he had in fact violated departmental policies Sections 200-01 1-D and 4-E by renting the above mentioned vehicle at a discount for Mr. Williams. He also indicated in his interview that he knew from the arrest he made of Mr. Williams that he was a person with a questionable character or reputation.
24. On July 25, 2012, Chief Ledford submitted a Form F-5B to Respondent for Petitioner. (Respondent's exhibit 20) The Form F-5B stated that Petitioner was employed with the Shelby Police Department for three years, seven months, and that the agency would not consider this individual for reappointment.
25. On November 8, 2012, Kodiak Company Police submitted a Report of Appointment Form F-5A to Respondent on behalf of Petitioner. (Respondent's exhibit 23)
26. On February 4, 2013, Shelby Police Department Chief Jeff Ledford wrote a memorandum to City Manager Rick Howell summarizing Petitioner's personnel violations with the Shelby Police Department and recommending employment termination. (Respondent's exhibit 19) Chief Ledford stated that Petitioner "committed six counts of fraud by knowingly violating the contract he signed for Enterprise Car Rentals" and that he also violated the policy which stated that "employees of the department are prohibited from association with known prostitutes, gamblers, known criminals, individuals of questionable character and reputation." The memorandum stated that Mr. Williams had a lengthy criminal record, was a convicted felon, and a registered sex offender. The memorandum also stated that due to consideration "[u]nder the Brady Material act of North Carolina," Rick Shaffer, District Attorney for the 27-B District, advised that he would no longer prosecute any cases for Petitioner, therefore rendering him unable to make arrests for the Department.
27. On April 29, 2013, Respondent's investigator Richard Squires submitted a memorandum to Respondent's probable cause committee. (Respondent's exhibit 25) The memorandum

alleged that Petitioner's law enforcement officer certification should be denied or suspended based upon the charge of assault on a handicapped person and for lack of good moral character.

28. On June 14, 2013, Respondent sent a letter to Petitioner stating that the probable cause committee found probable cause to deny or suspend Petitioner's law enforcement officer certification for an indefinite period for a lack of good moral character. (Respondent's exhibit 26)
29. Petitioner requested an administrative hearing on whether he lacked the good moral character required for law enforcement officers.
30. Respondent's investigator Richard Squires received forms from Shelby Police Department concerning Petitioner and forms from Petitioner concerning his certification and employment. He also received documents concerning Petitioner's oral and written warnings that he received while employed with the Shelby Police Department. Squires drafted a memorandum to be submitted to Respondent's Probable Cause Committee, he submitted the memorandum to the Probable Cause Committee, and the Probable Cause Committee found probable cause that Petitioner lacked the good moral character required for criminal justice officers.
31. Petitioner received four oral or written warnings for departmental violations.
32. Petitioner testified at this hearing. He made several admissions. He admitted his driver's license was suspended for failure to deposit security where he failed to make payments on a judgment from a motor vehicle accident. He admitted to assaulting Ms. Lockett in her face when he grabbed the cell phone from her in 2009. He admitted to sleeping on duty after being warned not to sleep on duty after the first incident. He told the polygraph examiner that he did not enter Ms. Lockett's room, and he admitted that he later stated that he did enter Ms. Lockett's bedroom. He admitted he rented the vehicles for Mr. Williams. He signed the Enterprise contracts. Mr. Williams gave him money to pay for the rentals, and Petitioner used this money from Mr. Williams to pay for the rentals. He signed contracts stating that no other drivers were permitted, but he knew that he was renting them for someone else. He admitted he signed contracts that the vehicles were only going to be driven in North Carolina and South Carolina, but he gave the vehicles to Mr. Williams with knowledge that the vehicles would be driven outside of North Carolina and South Carolina. He rented the vehicles knowing he would receive a law enforcement discount.
33. Petitioner was forthcoming, cooperative and honest throughout the internal investigations and this hearing. Once he knew law enforcement officers were looking for Mr. Navor Williams for the marijuana possession in the vehicle rented by Petitioner, he immediately contacted law enforcement officers with the whereabouts of Mr. Williams. This information led to the immediate apprehension and arrest of Mr. Williams. Furthermore, Petitioner has served his community outside of his role as a law enforcement officer.

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)(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[.]”
4. 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[.]”
5. 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[.]”
6. 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.”
7. The probable cause committee found probable causes existed to deny or suspend Petitioner's law enforcement officer certification because he lacked good moral character required for criminal justice officers based upon the circumstances surrounding his misconduct with the Shelby Police Department. Specifically, five incidents support the probable cause committee's finding of probable cause. Those incidents included

Petitioner's fraudulent contracts with Enterprise Rental Car, the September 2009 incident when he grabbed a telephone away from his wife and scratched her face, the January or February 2010 incident when he was found sleeping while on duty, the September 2010 incident when his drivers' license was suspended, and the May 2011 incident when he was charged with assault on a handicapped person.

8. Seldom, one or two instances of conduct are sufficient to conclude that someone lacks good moral character. *In re Legg*, 325 N.C. 658, 386 S.E. 2d 174 (1989). "However, when the findings are viewed in the aggregate, they reveal a systemic pattern of carelessness, neglect, inattention to detail and lack of candor that permeates the applicant's character and could seriously undermine public confidence" *Id.* at 673-4, 386 S. E.2d at 183.
9. Petitioner mentioned some community service he performed during his law enforcement career. Nevertheless, Respondent has shown a systemic pattern of bad acts including Petitioner's fraudulent contracts with Enterprise Rental Car, the September 2009 incident when he grabbed a telephone away from his wife and scratched her face, the January or February 2010 incidents when he was found sleeping while on duty, the September 2010 incident when his drivers' license was suspended, and the May 2011 altercation with Ms. Lockett.
10. 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).
11. Respondent has the burden of proof in the case at bar for Petitioner's law enforcement officer certification. Respondent showed by a preponderance of the evidence that Respondent's proposed suspension or denial of Petitioner's law enforcement officer certification is supported by substantial evidence.

PROPOSAL FOR DECISION

NOW, THEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, the Undersigned recommends Respondent Commission suspend or deny Petitioner's law enforcement officer certification for an indefinite period.

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 10th day of January, 2014.

Craig Croom
Administrative Law Judge