

STATE OF NORTH CAROLINA
COUNTY OF ROBESON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13DOJ15368

<p>Kent Patrick Locklear, Petitioner,</p> <p>v.</p> <p>North Carolina Sheriffs' Education And Training Standards Commission, Respondent.</p>	<p>PROPOSAL FOR DECISION</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------

On December 4, 2013, Administrative Law Judge Beecher R. Gray heard this case in Lumberton, North Carolina. This case was heard after Respondent requested, under 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: Kent Patrick Locklear, *Pro Se*
11683 NC Hwy 72E
Lumberton, North Carolina 28358

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

ISSUE

Whether Petitioner refused to submit to a drug screen on December 12, 2012.

FINDINGS OF FACT

1. The parties received notice of hearing by certified mail more than 15 days prior to the hearing. Petitioner received, by certified mail, the proposed Summary Denial of Justice Officer's Certification letter mailed by Respondent Sheriffs' Commission on June 7, 2013.

2. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter referred to as the "Commission" or 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. 0204(b) states:

The Commission shall revoke, deny, or suspend the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer:

(4) Has refused to submit to the drug screen as required by the rules in this Chapter or the rules of the Criminal Justice Education and Training Standards Commission or has refused to submit to an in-service drug screen pursuant to the guidelines set forth in the Drug Screening Implementation Guide as required by the employing agency through which the officer is certified.

4. Petitioner was an applicant for detention officer certification through the Robeson County Sheriff's Office. In May of 2013, Petitioner left the Robeson County Sheriff's Office in order to pursue employment with the Lumberton Police Department. However, because of budget cuts, Petitioner's position at the Lumberton Police Department was eliminated, and Petitioner currently is unable to pursue certification through the North Carolina Criminal Justice Education and Training Standards Commission (hereinafter the "CJ Commission"). Petitioner wishes to continue to pursue certification through the Sheriffs' Commission.

5. Petitioner was an applicant for certification through the CJ Commission in 2012. At that time, Petitioner was pursuing a corrections officer position at Scotland Correctional Institution through the North Carolina Department of Public Safety. Petitioner was required to undergo a psychological evaluation and mandatory drug screen as part of the employment screening process.

6. On or about December 12, 2012, Petitioner traveled to Kernersville, North Carolina in furtherance of his application through the Department of Public Safety. Petitioner was to complete a psychological evaluation and then a mandatory drug screen. During the application process on December 12, 2012, Petitioner was advised that under the drug testing rules of the Department of Public Safety and the CJ Commission, Petitioner was required to take the drug test on the same day as the psychological examination. Both tests were to be completed on December 12, 2012. Petitioner was also told there were no exceptions to this requirement.

7. Petitioner signed a NC Department of Correction Drug Screening Consent Form on December 12, 2012. On this Form, Petitioner again was cautioned that the drug screen must be conducted within 24 hours. Petitioner was advised in writing that failure to

complete the drug screen within 24 hours “may be considered a refusal to submit to a drug test.” Petitioner signed this Consent Form on December 12, 2012, indicating his understanding of the drug testing policies and procedures of the NC Department of Correction. (R. Ex. 3)

8. Petitioner was given instruction on where the drug testing facility was located and was provided a map with directions. Petitioner traveled to LabCorp in the early afternoon of December 12, 2012. Petitioner’s desire was to complete the drug screen in order to become employed at Scotland Correctional Institution.
9. Petitioner arrived at LabCorp and provided the receptionist with his paperwork and identification. Petitioner was advised to wait, but was not given any other verbal instruction regarding the testing procedure. Petitioner became thirsty and attempted to drink water from a fountain within the main lobby of LabCorp. Unable to get water from the fountain, Petitioner exited the main lobby in order to search for water. Upon his return to the LabCorp main lobby, Petitioner was confronted by the receptionist. Petitioner was advised that he could no longer take the drug screen because he left the main lobby.
10. Petitioner was advised by the receptionist that he could return to Kernersville, NC in order to obtain a new Drug Screening Consent Form in order to complete the drug screen. Petitioner was advised that he would need to return before 4:00 p.m. on December 12, 2012, and that LabCorp would not test him after that time.
11. Petitioner made the trip back to Kernersville, North Carolina on the afternoon of December 12, 2012, in order to obtain a new Drug Screening Consent Form. While in Kernersville, Petitioner explained to Department of Correction personnel what had transpired at the LabCorp testing facility. Petitioner was given a new Drug Screening Consent Form by Kathy Blackburn and was advised that he should return immediately to LabCorp in order to complete the drug screen within the mandatory 24 hour period. (Blackburn Affidavit, paragraph 11)
12. Petitioner made the drive back to the LabCorp testing facility, which was approximately 40 minutes from Kernersville. Upon arrival, Petitioner was advised that he could not be tested because he missed the 4:00 p.m. testing deadline. Petitioner pleaded with the LabCorp personnel and asked to be tested. Petitioner was advised by the LabCorp receptionist that he could return in the morning if he wished. Petitioner again pleaded with the LabCorp receptionist, advising her that he was required to be tested on the same day as his psychological examination, per the guidelines established by the Department of Public Safety and the CJ Commission. LabCorp declined to conduct the drug screen, as Petitioner had arrived back at the testing facility outside of the 4:00 p.m. cutoff for drug screening on December 12, 2012.
13. Petitioner contacted Department of Public Safety personnel in order to obtain a waiver of the 24 hour testing requirement. The basis of this request was that Petitioner did not intentionally miss the drug screen appointment and did not willfully refuse to be tested.

Petitioner's desire was to submit to the drug screen on December 12, 2012, in order to obtain employment with Scotland Correctional Institution. Petitioner was told that he could not be retested and that his failure to submit to the drug screen within 24 hours of notice would be considered a refusal.

14. On December 13, 2012, Petitioner was advised in writing that his conditional offer of employment with the Department of Public Safety was being withdrawn for three (3) years because of Petitioner's refusal to obtain a drug screen on December 12, 2012. (R. Ex. 4)
15. On January 15, 2013, Petitioner was advised in writing by the Interim Director of the CJ Commission that Petitioner's application for certification through the CJ Commission was being denied for three (3) years because of Petitioner's refusal to submit to a drug screen within the time required, in violation of the CJ Commission's rules. (R. Ex. 5)
16. Notwithstanding the above-referenced finding by the CJ Commission, Petitioner's desire on December 12, 2012 was to submit to a drug screen in order to obtain employment at Scotland Correctional Institution. Petitioner did not attempt to thwart the drug screen on December 12, 2012. Rather, Petitioner attempted to return to LabCorp a second time for the purpose of being tested on that date after being turned away for leaving the main lobby to get a drink of water. Petitioner was genuinely upset that he was being turned away despite efforts to comply with the mandatory 24 hour testing procedure. Petitioner's failure to make the 4:00 p.m. testing cutoff at LabCorp on December 12, 2012 was not intentional and certainly was not an attempt by Petitioner to avoid the drug screen or otherwise willfully refuse to be tested.
17. Department of Public Safety personnel classified Petitioner's conduct as a refusal on the Criminal Justice Drug Testing Report Form because the form does not have an option for someone who fails to complete the drug screen on time. (Blackburn Affidavit, paragraph 18) For this reason, a notation was made on the Report Form indicating that Petitioner "failed to go to LabCorp to complete drug screen." (R. Ex. 4)
18. Based on the evidence presented at the administrative hearing, the Undersigned finds that although Petitioner's conduct may have been technically classified as a refusal under the regulations established by the Department of Public Safety and the CJ Commission, Petitioner's conduct on December 12, 2012 did not constitute a willful refusal to submit to a drug screen. Petitioner's intent was to comply with the screening procedures and to submit to a drug screen within 24 hours of completing his psychological examination.

CONCLUSIONS OF LAW

1. The parties properly are before the Office of Administrative Hearings.
2. 12 N.C.A.C. 10B. 0301(6)(c) requires every justice officer employed in North Carolina to produce negative drug screen results.

3. Under 12 N.C.A.C. 10B.0205(2)(g), when Respondent summarily denies the certification of a justice officer for refusing to submit to a drug screen, the period of sanction shall be not less than five years; however, Respondent may either reduce or suspend the period of sanction under this Rule or substitute a period of probation in lieu of revocation of certification following an administrative hearing, where extenuating circumstances brought out at the administrative hearing warrant such a reduction.
4. After considering the evidence presented and the record in this case, the undersigned concludes the Petitioner did not willfully refuse to submit to a drug screen on December 12, 2012, within the meaning of the Commission's Rules. Therefore, Petitioner's inability to complete a drug screen on December 12, 2012 shall not bar Petitioner from obtaining certification through the Sheriffs' Commission, provided Petitioner meets all other certification requirements, including, but not limited to, a negative drug screen.
5. This Proposal for Decision shall in no way impact any previous notices, orders, or decisions of the North Carolina Criminal Justice Education and Training Standards Commission.

PROPOSAL FOR DECISION

Based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the undersigned recommends that the failure of Petitioner to obtain a drug screen on December 12, 2012 shall not stand as a bar to Petitioner's certification through the Sheriffs' Commission, provided Petitioner meets all other certification requirements of the Sheriffs' Commission. Petitioner's failure to obtain a drug screen on December 12, 2012 arose out of mistake. Petitioner did not willfully refuse to submit to a drug screen on that date for the reasons stated hereinabove.

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 3rd day of January, 2014.

Beecher R. Gray
Administrative Law Judge