

**IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13 DOJ 15454**

PROPOSAL FOR DECISION

APPEARANCES

Respondent: Lauren Tally Earnhardt
Attorney for Respondent
Department of Justice
Law Enforcement Liaison Section
9001 Mail Service Center
Raleigh, North Carolina 27699-9001

ISSUE

RULES AT ISSUE

12 NCAC 09G.0504(b)(3)

12 NCAC 09G.0505(b)(1)

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.

In making the FINDINGS OF FACT, the undersigned Administrative Law Judge 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 witness, 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 the case.

FINDINGS OF FACT

1. Both parties received Notice of Hearing, and Petitioner received the notification of Probable Cause to Deny Law Enforcement Officer Certification letter mailed by the Respondent on June 11, 2013.
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 9G, to certify correctional officers and to revoke, suspend, or deny such certification.
3. 12 NCAC 09G.0504(b)(3) provides that the North Carolina Criminal Justice Education and Training Standards Commission may, based on the evidence for each case, suspend, revoke, or deny the certification of a corrections officer when the Commission finds that the applicant for certification or the certified officer: (3) has committed or been convicted of a misdemeanor as defined in 12 NCAC 09G.0102 after certification.
4. 12 NCAC 09G.0505(b)(1) provides that when the North Carolina Criminal Justice Education and Training Standards Commission suspends or denies the certification of a correction officer pursuant to 12 NCAC 09G.0504 of this Section, the period of sanction shall be 3 years where the cause of sanction is: (1) the commission or conviction of a misdemeanor as defined in 12 NCAC 9G.0102.
5. 12 NCAC 09G.0102 (9)(vvv) defines “duty to stop in event of accident or collision” (Hit/Run Fail Stop Property Damage) as a Department of Correction Misdemeanor.
6. N.C.G.S. § 20-166(c) provides:

“The driver of any vehicle, when the driver knows or reasonably should know that the vehicle which the driver is operating is involved in a crash which results:

- (1) Only in damage to property; or
- (2) In injury or death to any person, but only if the operator of the vehicle did not know and did not have reason to know of the death or injury;

shall immediately stop the vehicle at the scene of the crash. If the crash is a reportable crash, the driver shall remain with the vehicle at the scene of the crash until a law enforcement officer completes the investigation of the crash or authorizes the driver to leave and the vehicle to be removed, unless remaining at the scene places the driver or others at significant risk of injury.

Prior to the completion of the investigation of the crash by a law enforcement officer, or the consent of the officer to leave, the driver may not facilitate, allow, or agree to the removal of the vehicle from the scene, for any purpose other than to call for a law enforcement officer, to call for medical assistance or medical treatment, or to remove oneself or others from significant risk of injury. If the driver does leave for a reason permitted by this subsection, then the driver must return with the vehicle to the accident scene within a reasonable period of time, unless otherwise instructed by a law enforcement officer. A willful violation of this subsection is a Class 1 misdemeanor.” (N.C Gen. Stat 2011).

7. Petitioner was awarded probationary correctional officer certification by the North Carolina Criminal Justice Education and Training Standards Commission on March 2, 2007 and received general correctional officer certification on March 2, 2008. (Respondent's Exhibit 2)
8. On July 9, 2012, Respondent received a Report of Arrest from the North Carolina Department of Public Safety notifying them Petitioner had been charged with “Hit and Run Fail Stop Prop Damage G.S. 20-166(C) and Driving While Impaired on February 9, 2012.” The Report of Arrest included Petitioner’s citation. (Respondent’s Exhibit 3)
9. On February 9, 2012, Robert Bilodeau, was visiting family members at a home on the corner of Millbrook Road and Farley Drive Raleigh, NC when he heard a crash. He quickly looked outside and could see a vehicle with heavy front end damage and a tall, skinny black male (identified by Mr. Bilodeau as Petitioner) wearing dark clothes with what appeared to be police patches. Mr. Bilodeau ran outside to Petitioner and asked if he was ok. Petitioner was fumbling around with some pieces of his vehicle and told Mr. Bilodeau he was fine. Petitioner repeatedly asked Mr. Bilodeau not to call the police. Mr. Bilodeau agreed, but told Petitioner that one of the other neighbors was bound to have

already called the police. Petitioner then took off running from the scene towards Falls of the Neuse Road.

10. Raleigh Police Officer Pettet was working day shift on February 9, 2012 and received a call for service to a single vehicle crash at the corner of Millbrook Road and Farley Drive. Upon arriving, he located a black 2008 Nissan Altima with significant damage to the front end, windshield, and having front air bags deployed. The vehicle had collided with a tree, speed limit sign, crossed all lanes of traffic, moving into the oncoming lanes and stopped on the curb. The vehicle was not drivable and Officer Pettet estimated had sustained approximately \$4,000 in damage. Officer Pettet could not locate anyone inside the vehicle or in the surrounding area. He spoke with Mr. Bilodeau who gave a description of the driver and recounted the driver's request that Mr. Bilodeau not call the police.
11. Other Raleigh Police Officers canvassed the area and located Petitioner a block from the crash site. Petitioner admitted to the officers he was involved in a crash and that he got scared so he decided to run home. Petitioner was driven back to the crash site where he was identified by Mr. Bilodeau as the driver of the Nissan Altima. Officer Pettet did not observe any serious injuries on Petitioner. EMS responded and did not transport Petitioner to the hospital.
12. Officer Pettet received a statement from Petitioner which stated the following:

“I worked last night and got off this morning around 745AM. I left there and went to a friend's house in Garner and drank a 22oz beer. I left a couple of hours later to go home and I fell asleep. I live just right around the block, and I almost made it home. I fell asleep and ran off the road and the next thing I know, the airbags went off and I freaked out. I didn't know what to do. I've never been charged with anything and nothing like this has ever happened, and I just panicked. I just started running towards my house, which was right around the corner, and the next think I know I got picked up. I don't deny it, I know what happened was wrong, and I shouldn't have run off. I was just scared.”
13. Officer Pettet charged Petitioner with Hit and Run and Driving While Impaired on February 9, 2012. The charges were dismissed in Wake County District Court on December 21, 2012, after the State's motion to continued was denied.
14. At the hearing, Petitioner admitted to being in an vehicle crash but claimed he was running home to get his insurance card. Petitioner never mentioned this to any responding parties, including Mr. Bilodeau, who Petitioner expressly pleaded with not to call the police. Petitioner's statements at the hearing are inconsistent with what he told law enforcement who arrived at the scene and therefore lacks credibility. No other witnesses testified on Petitioner's behalf.

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 Respondent, 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 9G, to certify correctional officers and to revoke, suspend, or deny such certification.
3. Pursuant to 12 NCAC 09G.0504(b)(3) the Commission may, suspend, revoke, or deny the certification of a corrections officer when the Commission finds that the applicant for certification or the certified officer: (3) has committed or been convicted of a misdemeanor as defined in 12 NCAC 09G.0102 after certification.
4. Pursuant to 12 NCAC 09G.0505(b)(1) when the Commission suspends or denies the certification of a correction officer pursuant to 12 NCAC 09G.0504 of this Section, the period of sanction shall be 3 years where the cause of sanction is: (1) the commission or conviction of a misdemeanor as defined in 12 NCAC 9G.0102.
5. 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. Gen. Stat. § 150B-29(a). The administrative law judge shall decide the case based upon the preponderance of the evidence. N.C. Gen. Stat. § 150B-34(a).
6. Respondent has the burden of proof in the case at bar. Respondent has shown by a preponderance of the evidence that Respondent's proposed suspension of Petitioner's correctional officer certification is supported by substantial evidence.
7. Respondent may properly suspend the Petitioner's certification pursuant to 12 NCAC 09G .0504(b)(3) for the commission of a misdemeanor as defined in 12 NCAC 09G.0102 after certification.
8. 12 NCAC 09G.0102 (9)(vvv) defines "20-166(c)- Duty to stop in event of accident or collision"(Hit/Run Fail Stop Property Damage) as a Department of Correction Misdemeanor.
9. N.C.G.S. § 20-166(c) states:

“The driver of any vehicle, when the driver knows or reasonably should know that

the vehicle which the driver is operating is involved in a crash which results:

- (1) Only in damage to property; or
- (2) In injury or death to any person, but only if the operator of the vehicle did not know and did not have reason to know of the death or injury;

shall immediately stop the vehicle at the scene of the crash. If the crash is a reportable crash, the driver shall remain with the vehicle at the scene of the crash until a law enforcement officer completes the investigation of the crash or authorizes the driver to leave and the vehicle to be removed, unless remaining at the scene places the driver or others at significant risk of injury.

Prior to the completion of the investigation of the crash by a law enforcement officer, or the consent of the officer to leave, the driver may not facilitate, allow, or agree to the removal of the vehicle from the scene, for any purpose other than to call for a law enforcement officer, to call for medical assistance or medical treatment, or to remove oneself or others from significant risk of injury. If the driver does leave for a reason permitted by this subsection, then the driver must return with the vehicle to the accident scene within a reasonable period of time, unless otherwise instructed by a law enforcement officer. A willful violation of this subsection is a Class 1 misdemeanor.” (N.C. Gen. Stat. 2011)

10. N.C.G.S. § 20-4.01 (33b) Defines a “Reportable Crash” as a crash involving a motor vehicle that results in one or more of the following:
 - a. Death or injury of a human being.
 - b. Total property damage of one thousand dollars (\$ 1,000) or more, or property damage of any amount to a vehicle seized pursuant to G. S. § 20-28.3. (N.C. Gen. Stat. 2011)
11. A preponderance of the evidence shows Petitioner committed the misdemeanor criminal offense of “Duty to stop in event of accident or collision”(Hit and Run Failure to Stop for Property Damage) on February 9, 2012 when the car he was driving was involved in a reportable crash at the corner of Millbrook Road and Farley Drive and he fled the scene on foot. Petitioner knew his vehicle had been involved in a crash involving property damage and still left the scene. Petitioner failed to show his leaving the scene was with the consent of law enforcement or because of a significant safety risk to himself or others.
12. The findings of the Probable Cause Committee of the Respondent are supported by substantial evidence and are not arbitrary and capricious.

PROPOSAL FOR DECISION

NOW, THEREFORE, based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the undersigned Administrative Law Judge recommends Respondent suspend the Petitioner's correctional officer certification for a period of not less than three (3) years based upon Petitioner's commission of the Class B Misdemeanor, after certification to wit; Duty to stop in event of accident or collision (Hit/Run Fail Stop Property Damage) in violation of N.C.G.S. § 20-166(c) .

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 29th day of January, 2014.

Julian Mann, III
Assistant Administrative Law Judge