

STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13 DOJ 17240

GARRETT DWAYNE GWIN,)
Petitioner,)
)
v.)
)
NORTH CAROLINA CRIMINAL)
JUSTICE EDUCATION AND)
TRAINING STANDARDS)
COMMISSION,)
Respondent.)

PROPOSAL FOR DECISION

THE ABOVE-ENTITLED MATTER was heard before the undersigned Augustus B. Elkins II, Administrative Law Judge, in Fayetteville, North Carolina. This case was heard pursuant to N.C.G.S. § 150B-40, 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. The record was left open for the parties' submission of further materials, including but not limited to supporting briefs, memorandums of law and proposals.

The Petitioner submitted proposals and argument on April 10, 2014 which was received by the Undersigned on April 14, 2014. The Respondent submitted proposals and argument on April 21, 2014 which was received by the Undersigned on April 25, 2014. The record was closed on April 25, 2014.

APPEARANCES

For Petitioner: Garrett Dwayne Gwin, pro se
6321 Harding Drive
Hope Mills, North Carolina 28348

For Respondent: Catherine F. Jordan
Assistant Attorney General
Department of Justice
Law Enforcement Liaison Section
9001 Mail Service Center
Raleigh, North Carolina 27699-9001

ISSUES

Is Respondent's proposed denial/suspension of Petitioner's law enforcement certification for knowingly making a material misrepresentation of information required for certification supported by a preponderance of the evidence?

EXHIBITS

Respondent's Exhibits 1-27 were introduced and admitted.

RULES

12 NCAC 09A .0204(b)(6)
12 NCAC 09A .0205(b)(4)

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. Petitioner received the notification of Proposed Denial/Suspension of Law Enforcement Officer Certification through a letter mailed by Respondent on June 14, 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 9A, to certify law enforcement officers and to revoke, suspend, or deny such certification.
3. Petitioner's Officer's Complete History Report maintained by Respondent showed that he had been employed with law enforcement agencies since 1994 including NHRMC CP, Carolina Beach Police Department, Wilmington Police Department, Hope Mills Police Department, Cumberland County Sheriff's Office, Raeford Police Department, Parkton Police Department, and Field Force Company Police Department.

4. On February 3, 2000, Respondent received a Report of Appointment Form F-5A submitted by Hope Mills Police Department on behalf of Petitioner. (Respondent's exhibit 16)
 - A. The Form F-5A stated that "[e]ach applicant must list any and all criminal charges regardless of the date of offense and the disposition" Petitioner listed the following criminal charges: "Misdemeanor Worth Check" with a date of offense of "10-15-1997," charged by "New Hanover County," and the disposition of the case was "Pled Guilty 12-15-97."
 - B. Petitioner signed and dated the Form F-5A, and the following statement existed directly above his signature: "I attest that I am aware of the minimum standards for employment, that I meet or exceed each of those requirements, that the information provided above and all other information submitted to me, both oral and written throughout the employment and certification process, is thorough, complete, and accurate to the best of my knowledge. I further understand and agree that any omission, falsification or misrepresentation of any factor or portion of such information can be the sole basis for termination of my employment and/or denial, suspension, or revocation of my certification at any time, now or later."
5. On December 1, 2005, Petitioner obtained a criminal record search from New Hanover County. Petitioner's criminal record search indicated that he was charged with a worthless check in 97CR 029816 where he paid a fine of \$176.00, in 99CR 028557 which was dismissed by the district attorney, and in 99CR 028558 which was also dismissed by the district attorney. (Respondent's exhibit 12)
6. On December 5, 2000, Petitioner signed and notarized a Personal History Statement Form F-3 to be submitted by the Cumberland County Sheriff's Office to the North Carolina Sheriffs' Education and Training Standards Commission. Question 10 stated: "Indicate below schools attended." Petitioner indicated that he had attended Diablo Valley College in Pleasant Hill, California from 1988-1993 in the major field of "Administration of Justice," and he indicated that he had attended College of San Mateo in San Mateo, California from 1990-1992 the major field of "POST Reserve Police Academy." (Respondent's exhibit 9)
7. On December 19, 2005, Respondent received a Report of Appointment Form F-5A from Raeford Police Department submitted on behalf of Petitioner. (Respondent's exhibit 4)
 - A. The Form F-5A stated that "[e]ach applicant must list any and all criminal charges regardless of the date of offense and the disposition" Petitioner listed the following three criminal charges:
 - i. "W/C Simple" with a date of offense of "10/15/1997," charged by "New Hanover," and the disposition of the case was "paid fine 12/15/1997."

- ii. “W/C Simple” with a date of offense of “09/17/98,” charged by “New Hanover,” and the disposition of the case was “dismissed by DA 12/05/2005.”
 - iii. “W/C Simple” with a date of offense of “09/4/98,” charged by “New Hanover,” and the disposition of the case was “dismissed by DA 12/05/2005.”
 - B. Petitioner signed and dated the Form F-5A, and the following statement existed directly above his signature: “I attest that I am aware of the minimum standards for employment, that I meet or exceed each of those requirements, that the information provided above and all other information submitted to me, both oral and written throughout the employment and certification process, is thorough, complete, and accurate to the best of my knowledge. I further understand and agree that any omission, falsification or misrepresentation of any factor or portion of such information can be the sole basis for termination of my employment and/or denial, suspension, or revocation of my certification at any time, now or later.”
- 8. On February 27, 2009, Respondent received a Report of Separation Form F-5B submitted by Raeford Police Department on behalf of Petitioner. The Form F-5B stated that Petitioner was dismissed, his date of final separation was February 23, 2009, that the agency would not consider the individual for reappointment, and that the agency would not recommend employment elsewhere as a criminal justice officer. The following statement existed on Petitioner’s Form F-5B: “Lt. Gwin was counseled for Job Performance on 02/18/2009. Later that same day he was on the cell phone with someone. He was unintentionally keying his mike. He was heard calling the African-American Chief and Sheriff ‘Little monkeys.’ This was considered a racial slur. He was also heard calling the Chief of Police a ‘piece of shit.’ This went out over Dispatch 1 on the radio.” (Respondent’s exhibit 5)
- 9. On May 18, 2009, Respondent received a Personal History Statement Form F-3 submitted by Parkton Police Department on behalf of Petitioner. (Respondent’s exhibit 6)
 - A. Petitioner signed and notarized the Form F-3 on May 18, 2009. The following statement existed directly above his signature: “I hereby certify that each and every statement made on this form is true and complete and I understand that any misstatement or omissions of information will subject me to disqualification or dismissal. I also acknowledge that I have a continuing duty to update all information contained in this document. I will report to the employing agency and forward to the N.C. Criminal Justice Education and Training Standards Commission any additional information which occurs after the signing of this document.
 - B. Question 10 stated: “Indicate below the schools you have attended.” On Page 1 on the Form F-3, the directions existed that “If you need extra space, add additional pages and identify the information by item number.” Petitioner failed to indicate that he had attended Diablo College in Pleasant Hill, California, and

the College of San Mateo in San Mateo, California. Petitioner attended Diablo College in Pleasant Hill, California from 1986 through 1992. (Respondent's exhibit 7) Petitioner attended the College of San Mateo in San Mateo, California from 1990 through 1992. (Respondent's exhibit 8) Petitioner's transcript indicated that he took courses entitled "Res Officer Basic Training" at this college. His transcript also showed that he took courses entitled "Arrest and Firearms" and "Reserve Training Module C" at this college.

- C. Question 47 stated: "Have you ever been arrested by a law enforcement officer or otherwise charged with a criminal offense?" Question 47 also stated "The term 'charged' as used in this question includes being issued a citation or criminal summons."
- i. Petitioner answered this question: "Worthless check" and stated that the date was "1997," the law enforcement agency was "Carolina Beach," and the disposition of the case was "paid fine."
 - ii. Petitioner failed to list his two simple worthless check charges in 99CR 028557 and 99CR 028558.
 - iii. A true copy from the New Hanover County clerk's office showed that Petitioner was charged in 99CR 028557 of simple worthless check. (Respondent's exhibit 10) The document showed that the date of offense was 09/17/1998, the charge was issued on 04/08/1999, Petitioner was served on 12/01/2005, and the charge was disposed of on 12/01/2005. The complainant was Domino's Pizza, and the amount was for \$47.50.
 - iv. A true copy from the New Hanover County clerk's office showed that Petitioner was charged in 99CR 028558 of simple worthless check. (Respondent's exhibit 11) The document showed that the date of offense was 09/04/1998, the charge was issued on 04/08/1999, Petitioner was served on 12/01/2005, and the charge was disposed of on 12/01/2005. The complainant was Domino's Pizza, and the amount was for \$49.00.
10. On June 19, 2009, Respondent received a Report of Appointment Form F-5A submitted by Parkton Police Department on behalf of Petitioner. (Respondent's exhibit 13)
- A. The Form F-5A stated that "[e]ach applicant must list any and all criminal charges regardless of the date of offense and the disposition"
 - B. Petitioner checked the box stating "no criminal charges" and initialed underneath the box checked. Petitioner failed to list his criminal charges of (1) simple worthless check, 97CR 029816; (2) simple worthless check, 99CR 028557; and (3) simple worthless check, 99CR 028558. (Respondent's exhibit 10, 11, 14)
 - C. Petitioner signed and dated the Form F-5A, and the following statement existed directly above his signature: "I attest that I am aware of the minimum standards for employment, that I meet or exceed each of those requirements, that the information provided above and all other information submitted to me, both oral

and written throughout the employment and certification process, is thorough, complete, and accurate to the best of my knowledge. I further understand and agree that any omission, falsification or misrepresentation of any factor or portion of such information can be the sole basis for termination of my employment and/or denial, suspension, or revocation of my certification at any time, now or later.”

11. On August 25, 2010, Respondent received a Personal History Statement Form F-3 submitted by Parkton Police Department on behalf of Petitioner. (Respondent’s exhibit 17)
 - A. Petitioner signed and notarized the Form F-3 on August 25, 2010. The following statement existed directly above his signature: “I hereby certify that each and every statement made on this form is true and complete and I understand that any misstatement or omissions of information will subject me to disqualification or dismissal. I also acknowledge that I have a continuing duty to update all information contained in this document. I will report to the employing agency and forward to the N.C. Criminal Justice Education and Training Standards Commission any additional information which occurs after the signing of this document.
 - B. Question 10 stated: “Indicate below the schools you have attended.” Petitioner failed to indicate that he had attended Diablo College in Pleasant Hill, California from 1986 through 1992, and the College of San Mateo in San Mateo, California from 1990 through 1992.
 - C. Question 47 stated: “Have you ever been arrested by a law enforcement officer or otherwise charged with a criminal offense?” Petitioner answered this question: “Worthless check” and stated that the date was “11/97,” the law enforcement agency was “Carolina Beach PD,” and the disposition of the case was “paid fine.” Petitioner failed to list the following criminal charges: (1) simple worthless check 99CR 028557; and, (2) simple worthless check 99CR 028558.
12. On October 25, 2010, Respondent received a Report of Appointment Form F-5A submitted by Parkton Police Department on behalf of Petitioner. (Respondent’s exhibit 18)
 - A. The Form F-5A stated that “[e]ach applicant must list any and all criminal charges regardless of the date of offense and the disposition”
 - B. Petitioner listed the following criminal charge: “worthless check,” with a date of offense of “1997,” charging law enforcement agency of “Wilmington Police,” and disposition of case was “paid fine 1997.” Petitioner failed to list his criminal charges of (1) simple worthless check, 99CR 028557; and (2) simple worthless check, 99CR 028558.
 - C. Petitioner signed and dated the Form F-5A, and the following statement existed directly above his signature: “I attest that I am aware of the minimum standards

for employment, that I meet or exceed each of those requirements, that the information provided above and all other information submitted to me, both oral and written throughout the employment and certification process, is thorough, complete, and accurate to the best of my knowledge. I further understand and agree that any omission, falsification or misrepresentation of any factor or portion of such information can be the sole basis for termination of my employment and/or denial, suspension, or revocation of my certification at any time, now or later.”

13. On October 26, 2010, Petitioner wrote a statement acknowledging that “[i]n November 1997, [he] was charged for a misdemeanor worthless check.” He further stated that he had become separated from his now ex-wife, that she took “all the money out of our bank account, hiding the notice” that was sent to him, and that he “did not know about the check bouncing until Carolina Beach Police” served him. (Respondent’s exhibit 15)
14. On October 28, 2010, Respondent received a Report of Appointment Form F-5A submitted by Parkton Police Department on behalf of Petitioner. (Respondent’s exhibit 19)
 - A. This Form F-5A stated that “[e]ach applicant must list any and all criminal charges regardless of the date of offense and the disposition”
 - B. Petitioner listed the following criminal charge: “worthless check,” with a date of offense of “1997,” charging law enforcement agency of “Wilmington Police,” and disposition of case was “paid fine 1997.” Petitioner failed to list his criminal charges of (1) simple worthless check, 99CR 028557; and (2) simple worthless check, 99CR 028558.
 - C. Petitioner signed and dated the Form F-5A, and the following statement existed directly above his signature: “I attest that I am aware of the minimum standards for employment, that I meet or exceed each of those requirements, that the information provided above and all other information submitted to me, both oral and written throughout the employment and certification process, is thorough, complete, and accurate to the best of my knowledge. I further understand and agree that any omission, falsification or misrepresentation of any factor or portion of such information can be the sole basis for termination of my employment and/or denial, suspension, or revocation of my certification at any time, now or later.”
15. On or about November 4, 2010, Respondent received a Report of Appointment Form F-5A submitted by Parkton Police Department on behalf of Petitioner. (Respondent’s exhibit 20)
 - A. This Form F-5A stated that “[e]ach applicant must list any and all criminal charges regardless of the date of offense and the disposition”
 - B. Petitioner listed the following criminal charge: “worthless check,” with a date of offense of “1997,” charging law enforcement agency of “Wilmington PD,” and

disposition of case was “paid fine 1997.” Petitioner failed to list his criminal charges of (1) simple worthless check, 99CR 028557; and (2) simple worthless check, 99CR 028558.

- C. Petitioner signed and dated the Form F-5A, and the following statement existed directly above his signature: “I attest that I am aware of the minimum standards for employment, that I meet or exceed each of those requirements, that the information provided above and all other information submitted to me, both oral and written throughout the employment and certification process, is thorough, complete, and accurate to the best of my knowledge. I further understand and agree that any omission, falsification or misrepresentation of any factor or portion of such information can be the sole basis for termination of my employment and/or denial, suspension, or revocation of my certification at any time, now or later.”
16. On November 18, 2010, Petitioner received his probationary certification as a law enforcement officer from Respondent.
 17. On November 18, 2011, Petitioner received his general certification as a law enforcement officer from Respondent.
 18. On April 4, 2012, Parkton Police Department Chief Lowery sent via hand delivery a letter to Petitioner stating that “[t]his letter is to inform you of your immediate termination as a police officer with the Town of Parkton. I regret that circumstances have led to this action, but your conduct of April 2, 2012 requires the same. The basis of your termination relates to your unprofessional conduct as a law enforcement officer, facilitating the damage to private property and leaving the Town unprotected while involved in an activity of personal interest. Please note, any one of these offenses form a reason for termination. Please immediately turn in all Town-owned equipment and personal property or keys.” (Respondent’s exhibit 22)
 19. On April 10, 2012, Garris Neil Yarborough, Town Attorney, sent a letter to Petitioner stating “[a]s I told you last night, I am writing you today to inform you of the results of the Board Meeting last night. After hearing your side of the story, Chief Lowery’s side of the story and reviewing the file, the Town Board took no action to overturn Chief Lowery’s termination of you last Tuesday, April 3, 2011 [sic]. Again, you are directed to turn in your equipment and keys to Chief Lowery. Your continued failure to do so may result in legal action by the Town.” On April 11, 2012, Petitioner wrote a letter stating: “To whom it may concern: Effective immediately I tender my resignation to the Town of Parkton Police Department.” (Respondent’s exhibit 22)
 20. Petitioner stated that he had asked for a hearing before the Town Board. He believed that after the meeting when no one would speak with him that the “town” was planning to terminate him or ask him to resign. As such Petitioner wrote his April 11, 2012 letter resigning his position. Petitioner asserted that one could not be terminated and resign from the same position.

21. On May 21, 2012, Respondent received a Report of Separation Form F-5B from Parkton Police Department submitted on behalf of Petitioner. The Form F-5B stated that Petitioner resigned, and stated that the reason was “[u]nprofessional conduct as a Law Enforcement Officer.” The Form F-5B stated that “[t]his agency would **NOT** consider this individual for reappointment.” (Respondent’s exhibit 22)
22. On August 6, 2012, Respondent received a Personal History Statement Form F-3 submitted by Field Force Company Police on behalf of Petitioner. (Respondent’s exhibit 21)
 - A. Petitioner signed and notarized the Form F-3 on August 6, 2012. The following statement existed directly above his signature: “I hereby certify that each and every statement made on this form is true and complete and I understand that any misstatement or omissions of information will subject me to disqualification or dismissal. I also acknowledge that I have a continuing duty to update all information contained in this document. I will report to the employing agency and forward to the N.C. Criminal Justice Education and Training Standards Commission any additional information which occurs after the signing of this document.”
 - B. Question 10 stated: “Indicate below the schools you have attended.” Petitioner failed to indicate that he had attended Diablo College in Pleasant Hill, California from 1986 through 1992, and the College of San Mateo in San Mateo, California from 1990 through 1992.
 - C. Question 26 stated: “If you have ever been discharged or requested to resign from any position because of criminal or personal misconduct or rules violation, give details[.]” Petitioner answered “Raeford Police. New Chief accused me of being disloyal and calling him names.” Petitioner failed to disclose that he had resigned from the Parkton Police Department after being told that the Town Board had upheld Chief Lowery’s recommendation for termination.
 - D. Question 31 stated: “List all the jobs you have held in the last ten years. Put your present or more recent job first. If you need more space, you may attach additional sheets. Include military service in proper time sequence and temporary part-time jobs.” Petitioner answered this question by stating that he was employed with the Parkton Police from “10/10” through “4/12.” He stated that his reason for leaving was “quit to help wife open bakery.” Petitioner failed to disclose that he resigned from the Parkton Police Department after being told that the Town Board had upheld Chief Lowery’s recommendation for termination.
 - E. Question 47 stated: “Have you ever been arrested by a law enforcement officer or otherwise charged with a criminal offense?” Petitioner answered this question: “Worthless check” and stated that the date was “1997,” the law enforcement agency was “Carolina Beach,” and the disposition of the case was “paid fine.” Petitioner failed to list the following criminal charges: (1) simple worthless check 99CR 028557; and, (2) simple worthless check 99CR 028558.

23. On September 10, 2012, Petitioner signed a Report of Appointment Form F-5A to be submitted by Field Force Company Police to Respondent. (Respondent's exhibit 24)
- A. The Form F-5A stated that “[e]ach applicant must list any and all criminal charges regardless of the date of offense and the disposition” Petitioner did not list any criminal charges. Petitioner failed to disclose his criminal conviction of simple worthless check in 97CR 029816, his criminal charge of simple worthless check in 99CR 028557, and his criminal charge of simple worthless check in 99CR 028558.
 - B. Petitioner signed and dated the Form F-5A, and the following statement existed directly above his signature: “I attest that I am aware of the minimum standards for employment, that I meet or exceed each of those requirements, that the information provided above and all other information submitted to me, both oral and written throughout the employment and certification process, is thorough, complete, and accurate to the best of my knowledge. I further understand and agree that any omission, falsification or misrepresentation of any factor or portion of such information can be the sole basis for termination of my employment and/or denial, suspension, or revocation of my certification at any time, now or later.”
24. On October 11, 2012, Respondent received a Mandated Background Investigation Form F-8 submitted by Field Force Company Police on behalf of Petitioner. (Respondent's exhibit 23)
- A. Question 30 stated: “Have you ever been terminated or asked to resign from any employment?” Petitioner stated “yes Raeford Police.” Petitioner failed to disclose that he resigned from Parkton Police Department after being told that the Town Board had upheld Chief Lowery's recommendation for termination.
 - B. Question 32 stated: “Describe any criminal involvement that you may have had in the past.” Petitioner answered this question “none.” Petitioner failed to disclose his criminal conviction of simple worthless check in 97CR 029816, his criminal charge of simple worthless check in 99CR 028557, and his criminal charge of simple worthless check in 99CR 028558.
 - C. Question 34 stated: “Have you ever committed an illegal act since turning the age of 16? This is to include taking pen/pencils from an employer; taking change from a drawer at work for a drink; money out of a cash register; items for a scavenger hunt; shoplifting to any degree.” Petitioner answered this question “no.” Petitioner failed to disclose his criminal conviction of simple worthless check in 97CR 029816.
 - D. Question 35 stated: “Have you ever been arrested, detained, or charged with a crime, even if the charges against you have been dismissed?” Petitioner answered this question “no.” Petitioner failed to disclose his criminal conviction of simple worthless check in 97CR 029816, his criminal charge of simple worthless check

in 99CR 028557, and his criminal charge of simple worthless check in 99CR 028558.

- E. Question 38 stated: “Have you ever been issued a criminal summons to appear in court?” Petitioner answered this question “no.” Petitioner failed to disclose his criminal conviction of simple worthless check in 97CR 029816, his criminal charge of simple worthless check in 99CR 028557, and his criminal charge of simple worthless check in 99CR 028558.
 - F. Question 40 stated: “Have you ever been convicted of a crime?” Petitioner answered this question “no.” Petitioner failed to disclose his criminal conviction of simple worthless check in 97CR 029816.
25. On October 25, 2012, Petitioner signed a Report of Appointment Form F-5A to be submitted by Field Force Company Police to Respondent. (Respondent’s exhibit 25)
- A. The Form F-5A stated that “[e]ach applicant must list any and all criminal charges regardless of the date of offense and the disposition” Petitioner listed “worthless check,” and stated that the charging law enforcement agency was “Carolina Beach P.D.,” that the date of offense was “10/15/97,” and the disposition of the case was “paid disposed of.” Petitioner failed to disclose his criminal charge of simple worthless check in 99CR 028557, and his criminal charge of simple worthless check in 99CR 028558. Petitioner also checked the box indicated “no criminal charges other than minor traffic offenses.”
 - B. Petitioner signed and dated the Form F-5A, and the following statement existed directly above his signature: “I attest that I am aware of the minimum standards for employment, that I meet or exceed each of those requirements, that the information provided above and all other information submitted to me, both oral and written throughout the employment and certification process, is thorough, complete, and accurate to the best of my knowledge. I further understand and agree that any omission, falsification or misrepresentation of any factor or portion of such information can be the sole basis for termination of my employment and/or denial, suspension, or revocation of my certification at any time, now or later.”
26. On October 31, 2012, Chief Lowery wrote a letter to Marvin F. Clark, N.C. Criminal Justice Training and Standards, stating “The purpose of this letter is to notify your office that [Petitioner] resigned from the Parkton Police Department on April 11, 2012. The report of separation was reported on April 18, 2012 for the reason of Unprofessional Conduct as a Law Enforcement Officer which was an [sic] Town Policy Violation. If you have any question regarding this matter please do not hesitate to contact me.” (Respondent’s exhibit 22)
27. On April 29, 2013, Respondent’s investigator Richard N. Squires drafted a memorandum to Respondent’s Probable Cause Committee. (Respondent’s exhibit 26) The memorandum alleged that Petitioner knowingly made twenty material misrepresentations on his forms that were submitted to Respondent for certification.

28. On May 22, 2013, Petitioner's case came on before Respondent's Probable Cause Committee which found probable cause existed to deny or suspend Petitioner law enforcement officer certification because he knowingly made material misrepresentations on his forms that were submitted to Respondent for certification.
29. Petitioner requested an administrative hearing.
30. At the administrative hearing, Respondent's investigator, Richard Squires, testified that Respondent received documentation submitted on behalf of Petitioner for certification as a law enforcement officer with the Parkton Police Department and Field Force Company Police. Mr. Squires testified that he collected documents for Petitioner's application for certification and that he reviewed the documents and found inconsistencies. Squires testified that it is important for the applicant for certification to be honest in the completion of the forms. He testified that honesty is also an important trait in law enforcement.
31. Petitioner testified at the administrative hearing. He stated that most forms were filled out by others and that he was just given the Form F-5A, and someone stated "just sign here." Petitioner stated that he signed one of the Parkton Police Department Form F-5As when he was talking to Chief Lowery around 11:00 p.m. Petitioner testified that the initials on his some of his Form F-5As were not his initials and did not know who forged his initials on several of his Form F-5As that were submitted by different agencies.
32. Petitioner recalled the details of his criminal charges, although he stated that the charges never entered his mind at times. In his Proposal for Decision, Petitioner stated, "The accidentally omitted charges at hand are all simple worthless check charges. Petitioner did not find out about the charges until 2006 although they were taken out in 1998. Between 1998 and 2006, Petitioner had applied to and worked for two law enforcement agencies. On the day Petitioner was informed by the Raeford Police Department about the charges as outstanding Petitioner drove immediately to New Hanover County and was taken by an ADA before a judge who stated";...these charges should not have been taken out..." at which point he told the ADA to dismiss them without leave, as Petitioner record shows."
33. Petitioner admitted to omitting his schools attended, but stated that the schools were no longer viable schools, and that they were more than twenty years old. In his Proposal for Decision, Petitioner stated, "It is a common practice when applying to jobs to stop listing education or training that is more than twenty years old when it has been replaced by more current and relevant education or training. Petitioner had no intention to hide the fact that Petitioner had started attending community college as soon as Petitioner graduated from High School. The area on the State form F-3 has spaces for high school, college, college and other. Once Petitioner graduated from a community college in North Carolina with an associates and from a University with a Bachelors and was attending a Master's program, the classes Petitioner started and completed 20 years ago seemed to Petitioner to be irrelevant. So following common application practices Petitioner stopped

listing them. Petitioner now understands why the information is wanted, and the fact that it has nothing to do with Petitioner's education but rather just another attempt to try to locate criminal charges that someone might be hiding." Petitioner displayed a notebook that he stated had over 100 pages of certifications, awards and the like. Respondent counsel had not been aware of this notebook and there were no other copies available. Though not considered by the Undersigned, Petitioner was encouraged to provide the notebook to Respondent after Respondent receives this Proposal for Decision.

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)(6) states that:
 - (b) 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:
 - (6) has knowingly made a material misrepresentation of any information required for certification or accreditation[.]
4. 12 NCAC 09A .0205(b)(4) provides that when the Commission suspends or denies the certification of a criminal justice officer, the period of sanction shall be not less than five years; however, the Commission may either reduce or suspend the period of sanction under Paragraph (b) of this Rule or substitute a period of probation in lieu of suspension of certification following an administrative hearing, where the cause of sanction is material misrepresentation of any information required for certification.
5. A preponderance of the evidence exists to support the conclusion that Petitioner knowingly made a material misrepresentation of information required for certification when Petitioner completed a Personal History Statement, Form F-3 on May 18, 2009 for

Parkton Police Department. A preponderance of the evidence exists to support the conclusion that Petitioner knowingly made a material misrepresentation of information required for certification when Petitioner completed a Report of Appointment Form F-5A on June 19, 2009 for Parkton Police Department.

6. A preponderance of the evidence exists to support the conclusion that Petitioner knowingly made a material misrepresentation of information required for certification when Petitioner completed a Personal History Statement, Form F-3 on August 25, 2010 for Parkton Police Department. A preponderance of the evidence exists to support the conclusion that Petitioner knowingly made a material misrepresentation of information required for certification when Petitioner completed a Report of Appointment Form F-5A on October 25, 2010 for Parkton Police Department.
7. A preponderance of the evidence exists to support the conclusion that Petitioner knowingly made a material misrepresentation of information required for certification when Petitioner completed a Report of Appointment Form F-5A on October 28, 2010 for Parkton Police Department. A preponderance of the evidence exists to support the conclusion that Petitioner knowingly made a material misrepresentation of information required for certification when Petitioner completed a Report of Appointment Form F-5A on November 4, 2010 for Parkton Police Department.
8. A preponderance of the evidence exists to support the conclusion that Petitioner knowingly made a material misrepresentation of information required for certification when Petitioner completed a Personal History Statement, Form F-3 on August 6, 2012 for Field Force Company Police. A preponderance of the evidence exists to support the conclusion that Petitioner knowingly made a material misrepresentation of information required for certification when Petitioner completed a Report of Appointment Form F-5A on September 10, 2012 for Field Force Company Police.
9. A preponderance of the evidence exists to support the conclusion that Petitioner knowingly made a material misrepresentation of information required for certification when Petitioner completed a Mandated Background Investigation Form F-8 on October 11, 2012 for Field Force Company Police.
10. A preponderance of the evidence exists to support the conclusion that Petitioner knowingly made a material misrepresentation of information required for certification when Petitioner completed a Report of Appointment Form F-5A on October 25, 2012 for Field Force Company Police.
11. Petitioner has the burden of proof in the case at bar. The party with the burden of proof in a contested case must establish the facts required by G.S. § 150B-23(a) by a preponderance of the evidence. 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/suspension of Petitioner's law enforcement 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 the North Carolina Criminal Justice 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 Criminal Justice 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 9th day of June, 2014.

Augustus B. Elkins II
Administrative Law Judge