

STATE OF NORTH CAROLINA  
COUNTY OF GUILFORD

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
13OSP11087

Thomas Carl Bland, Petitioner,  v.  North Carolina Agricultural & Technical State University, Respondent.	<b>FINAL DECISION</b>
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The above-captioned case was heard before the Honorable Beecher Gray, Administrative Law Judge, on September 25, 2013 in High Point, North Carolina. Respondent filed a proposed decision on October 8, 2013.

**APPEARANCES**

FOR PETITIONER: Dow M. Spaulding  
ATTORNEY AT LAW  
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Greensboro, NC 27402

FOR RESPONDENT: Stephanie A. Brennan  
Special Deputy Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, N.C. 27602

**EXHIBITS**

Admitted for Petitioner:

<b>Exhibit Number</b>	<b>Description</b>
1	Photograph
2	Photograph
3	Photograph

Admitted for Respondent:

<b>Exhibit Number</b>	<b>Description</b>
1	General Orders re Off-campus Jurisdiction & Agency Jurisdiction
2	10/16/09 MOU re Police Cooperation and Jurisdiction

3	11/12/09 Memorandum re Off-campus Patrolling
4	2/17/10 letter re counseling
5	6/3/10 letter re counseling
6	6/22/10 letter re written warning
7	9/24/10 letter re written warning
8	10/6/10 letter re early warning system
9	10/15/10 letter re demotion
11	7/25/11 letter re written warning
12	6/7/12 Performance Review
13	7/31/12 Counseling letter
14	September 2012 NCA&T Patrol Operations Work Schedule
15	9/7/12 Communications Log
16	9/25/12 Letter re Pre-disciplinary Conference
17	10/1/12 Letter re Demotion
19	2/12/13 Letter from Chancellor Martin (Final Agency Decision)
20	10/1/12 Detailed Salary Analysis

**WITNESSES**

Called by Petitioner:            Thomas Bland  
   Lt. Garfield Whitaker

Called by Respondent:         Sylvia Anderson  
   Linc Butler  
   Thomas LeGrand  
   Lt. Garfield Whitaker  
   Major Kelly White

**ISSUE**

The sole issue for consideration is whether Respondent had just cause to demote Petitioner for unacceptable personal conduct.

**ON THE BASIS** of careful consideration of the sworn testimony of witnesses presented at the hearing, documents received and admitted into evidence, and the entire record in this proceeding, the Undersigned makes the following Findings of Fact. In making these Findings, 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 witness; any interest, bias or prejudice the witness may have; the opportunity of the witness to see, hear, know, and remember the facts or occurrences about which the witness testified; whether the testimony of the witness is reasonable; and whether such testimony is consistent with all other believable evidence in the case.

## FINDINGS OF FACT

1. The parties received notice of hearing more than 15 days prior to the hearing, and each stipulated on the record that notice was proper.
2. Respondent, North Carolina A&T University (“NC A&T”), is subject to Chapter 126 of the North Carolina General Statutes, and is Petitioner’s employer.
3. Petitioner is employed by Respondent as a police officer with the NC A&T University Police Department (“UPD”).
4. The NC A&T UPD entered a Memorandum of Understanding for Police Cooperation and Jurisdiction with the City of Greensboro Police Department (“GPD”) providing for extended jurisdiction for the UPD off-campus within the city of Greensboro. Resp. Ex. 2. The UPD’s General Orders set forth the UPD’s policy of “Off-campus Jurisdiction” and “Agency Jurisdiction.” Resp. Ex. 1. These policies set forth areas of primary jurisdiction for the UPD whereby the UPD will exercise its full police powers on NC A&T property. The policies also set forth areas of extended jurisdiction where “the [UPD] will not routinely exercise the full degree of powers granted.” Resp. Ex. 1. The “Off-campus Jurisdiction” policy provides that UPD may exercise its extended jurisdiction upon request of a sworn officer and that when acting upon the request of the GPD in the extended jurisdiction area, UPD officers have the same territorial and subject matter jurisdiction as a GPD officer. Resp. Ex. 1.
5. Under the Memorandum of Understanding and these written policies, UPD’s protocol was that UPD officers were not to respond to GPD calls for off-campus locations without a specific request for assistance. Requests from GPD for assistance were to come in either (1) through UPD dispatch; or (2) via a direct request from a GPD officer for UPD assistance.
6. These policies and procedures were communicated repeatedly and directly to all supervisors and officers, including Petitioner. It was a known rule within the UPD that UPD officers were not to respond to incidents off-campus absent a specific request for assistance to UPD from GPD. Major White, Lieutenant Whitaker, and Officer LeGrand each testified that these protocols for off-campus policing were well known within the UPD and that they were directly communicated to Officer Bland on multiple occasions prior to September 7, 2012.
7. Major White and Lieutenant Whitaker each testified to the importance of following the UPD’s protocol for assisting the GPD. Among other things, UPD officers responding to offsite incidents would divert resources away from the UPD’s primary duties of policing the campus and keeping its constituents safe, create legal liability for the UPD, risk interfering with GPD’s incident response, and potentially create problems for the UPD’s relationship with the GPD.

8. Petitioner had a history of performance problems and disciplinary issues prior to the incident in question. On February 17, 2010 he received a constructive counseling letter for errors in documentation. Resp. Ex. 4. On June 3, 2010, he received a constructive counseling letter for arriving late to a special event that he was scheduled to work. Resp. Ex. 5. On June 22, 2010, he received a written warning for submitting a report that was incomplete (including failure to document that money was seized during the arrest process) and contained errors. Resp. Ex. 6. On September 24, 2010, Petitioner received a written warning for violating protocol concerning off-campus policing. Resp. Ex. 7. On October 6, 2010, Petitioner was placed in the UPD's Early Warning System, from which he later was removed. Resp. Ex. 8. On October 15, 2010, Petitioner was demoted from Lieutenant to Sergeant for unacceptable job performance after he disciplined an employee without documenting his actions prior to ending his shift. Resp. Ex. 9. On July 25, 2011, Petitioner received a written warning for failure to review documentation completed by his officers and failure to properly document an off-campus incident being investigated by GPD that involved his officers. Resp. Ex. 11. In his June 2012 review of Petitioner's performance, Major White noted complaints and concerns about Petitioner's performance as a supervisor. Resp. Ex. 12. On July 31, 2012, Petitioner received a constructive counseling letter for failure to notify his supervisor that he would not appear in court as scheduled. Resp. Ex. 13.
9. Petitioner's written warning on September 24, 2010 stated:

On Saturday, September 18, 2010, you violated protocol as it pertains to the off-campus patrolling memorandum dated November 12, 2009. You responded to a [GPD] call for service which was off-campus, without authorization or a request from their agency. This action was clearly outside of the guidelines established by our department as it pertains to off-campus patrolling. Taking it upon yourself to investigate this call for service without the authorization or a request from [GPD] placed our University Community in a vulnerable position by pulling additional [UPD] resources away from campus . . . [T]he above actions lacked sound judgment, showed poor leadership, and demonstrated a lack of understanding of your responsibilities and duties. Your decision to respond to an off-campus call for service, that was directed to [GPD] concerns me due to your knowledge of our primary focus, which is first, the safety of our campus and all within. While in conference with you, I made reference to this information as I reviewed, explained and discussed with you, your job description and the expectations of you in your current position. . . . You may correct this deficiency by adhering to all departmental policies and memorandums. Please be informed that any continuation of this practice and failure to improve your performance may result in further disciplinary actions, up to and including dismissal.

Resp. Ex. 7.

10. Major White personally spoke with Petitioner on several occasions prior to September 7, 2012, about the off-campus policing protocol. On May 2, 2012, Lieutenant Whitaker reminded Petitioner of the protocol yet again.
11. On September 7, 2012, Petitioner was working the night shift at NC A&T. He was the supervisor on duty working with three officers who reported to him. *See* Resp. Ex. 15. During the shift, Petitioner and two of his officers (Officers Cox and LeGrand) responded to a call reporting a domestic situation on Market Street; while there, they became concerned about a female driver who appeared to be under the influence. While Petitioner, Officer LeGrand, and Officer Cox were attending to this situation, several GPD vehicles drove by with their lights flashing. The GPD vehicles were heading to a pool hall that is across the street from campus on private property that is not part of the UPD's primary jurisdiction. Petitioner went to his vehicle, turned on his scanner, and overheard the GPD officers state over the scanner that they needed a vehicle with a cage. Petitioner's vehicle did not have a cage, but Officer LeGrand's did. Before closing out the call concerning the domestic incident and suspected DUI, Petitioner instructed Officer LeGrand to go over to the pool hall, and both Petitioner and Officer LeGrand left in their vehicles and drove to the pool hall. Petitioner did not communicate his location to UPD dispatch. Petitioner's actions left Officer Cox as the sole officer with the female DUI suspect, which is not standard procedure. Petitioner's actions also left only one officer (Officer Golbourne) to patrol the campus.
12. When Petitioner and Officer LeGrand each arrived at the pool hall, several GPD vehicles and officers were on the scene, GPD had the situation under control, and GPD did not need either a vehicle with a cage nor any other assistance from UPD. Nonetheless, Petitioner exited his vehicle and had a conversation in the pool hall parking lot with a GPD officer (or officers).
13. On the night of September 7, 2012, GPD made no request for assistance from UPD through UPD dispatch. No GPD officer directly requested any assistance from UPD.
14. A pre-disciplinary conference was held on September 26, 2012. At the conference, Petitioner acknowledged that he had violated UPD protocol and stated that he knew a response to an off-campus incident is dispatched through the UPD telecommunications center.
15. Effective October 2, 2012, NC A&T demoted Petitioner from Sergeant to Officer. As a result, his position title changed from Public Safety Supervisor to Public Safety Officer, and his salary was reduced from \$48,576 to \$44,225. Resp. Ex. 17.
16. Petitioner appealed his demotion through NC A&T University's grievance process. The Chancellor affirmed the demotion. Resp. Ex. 19.
17. Petitioner contends that he properly was responding to a request from the GPD, because the GPD officer stated over the radio net that they had a need for a vehicle with a cage. GPD was making a request of its own officers, however, and this request could not

reasonably be interpreted as a request for assistance from UPD. Furthermore, Petitioner's testimony was not credible in light of the following: (1) overwhelming testimony concerning the repeated communications to UPD officers generally--and to Petitioner specifically--concerning the proper protocol for assisting the GPD; (2) Petitioner's written warning specifically for violating the off-campus policing protocol in 2010; (3) the fact that Petitioner's vehicle did not have a cage, yet he responded to the pool hall; and (4) Petitioner's changing story about whether he was aware that he had violated protocol.

18. Sylvia Anderson, Linc Butler, Thomas LeGrand, Lt. Garfield Whitaker, and Major Kelly White were credible witnesses. Furthermore, parts of their testimony were supported by documentation.
19. Petitioner was not under any duress or coercion that may have contributed to his conduct.
20. To demonstrate just cause, a State employer may show "unacceptable personal conduct." 25 N.C.A.C. 1J.0604(b)(2). Unacceptable personal conduct includes "insubordination," "conduct for which no reasonable person should expect to receive prior warning"; and "the willful violation of known or written work rules." 15 NCAC 1J.0614(7); 25 N.C.A.C. 1J.0614(8)(a) & (d). The State employer may discharge an employee for unacceptable personal conduct without any prior warning or disciplinary action. 25 N.C.A.C. 1J.0608(a).
21. A sole instance of unacceptable personal conduct, by itself, constitutes just cause for discharge. *Hilliard v. N.C. Dep't of Corr.*, 173 N.C. App. 594, 597, 620 S.E.2d 14, 17 (2005).

### **CONCLUSIONS OF LAW**

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over the just cause issue in this contested case under Chapter 126 and Chapter 150B of the North Carolina General Statutes.
2. On the sole issue to be heard, Respondent met its burden of proof by a preponderance of evidence to show that it had just cause to demote Petitioner. Petitioner's arguments to the contrary are without merit.
3. At the time of his demotion, Petitioner was a permanent State employee subject to Chapter 126 of the General Statutes of North Carolina (the State Personnel Act). A career State employee may be demoted only for just cause. N.C.G.S. § 126-35(a). The State employer bears the burden of demonstrating just cause. N.C.G.S. § 126-35(d).
4. Here, Petitioner's actions on September 7, 2012, detailed in the above Findings of Fact, constituted unacceptable personal conduct.

5. Petitioner's conduct is a "willful violation of known or written work rules" for officers employed at NC A&T. 25 N.C.A.C. 1J.0614(8). Petitioner's conduct also is "conduct for which no reasonable person should expect to receive prior warning." 25 N.C.A.C. 1J.0614(8). Finally, Petitioner was instructed by UPD management on multiple occasions to follow the protocol for off-campus policing, including through a written warning, and his failure to do so constitutes "insubordination." 25 N.C.A.C. 1J.0614(7).
6. Respondent demonstrated with credible and substantial evidence that Petitioner's conduct was conduct for which no reasonable person should expect to receive a prior warning, that it willfully violated known or written work rules, and that it constituted insubordination.
7. NC A&T demonstrated that Petitioner violated known UPD protocols for off-campus policing.
8. Respondent followed all of the required procedures to demote Petitioner for unacceptable personal conduct.
9. Respondent had no improper motivation for demoting Petitioner and did not make any improper considerations.
10. Petitioner's demotion was reasonably related to the seriousness of the offense and the record of Petitioner in his service with the Department.
11. Based on all foregoing Findings of Fact and Conclusions of Law, Petitioner's actions constituted unacceptable personal conduct. Considering the totality of the circumstances and utilizing guiding principles of equity and fairness, Respondent NC A&T University had just cause to demote Petitioner.

On the basis of the above Findings of Fact and Conclusions of Law, the Undersigned issues the following:

### **FINAL DECISION**

Respondent's decision to demote Petitioner for unacceptable personal conduct is supported by a preponderance of the evidence and is AFFIRMED.

### **NOTICE**

Under the provisions of North Carolina General Statute 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity

with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. §150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 30th day of October, 2013.

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Beecher R. Gray  
Administrative Law Judge