

STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14 DOJ 01601

ROBIN CIERPIOT,)
PETITIONER,)
)
v.)
)
NORTH CAROLINA SHERIFFS' EDUCATION)
AND TRAINING STANDARDS COMMISSION,)
RESPONDENT.)

PROPOSAL FOR DECISION

Pursuant to N.C. Gen. Stat. §150B-40(e), Respondent requested designation of an Administrative Law Judge to preside at the hearing of a contested case on this matter under Article 3A, Chapter 150B of the North Carolina General Statutes. On August 18, 2014, the Administrative Law Judge Melissa Owens Lassiter heard this contested case in Bolivia, North Carolina. On September 29, 2014, Respondent filed a Draft Proposal for Decision with the Office of Administrative Hearings.

APPEARANCES

Petitioner: Robin Cierpiot, Pro Se
94 Stone Furrow Trail
Leland, North Carolina 28451

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

ISSUE

Whether Respondent's Probable Cause Committee acted properly in denying Petitioner's justice officer certification application for being convicted of twelve separate counts of "Simple Worthless Check," for making a material misrepresentation to Respondent by failing to list five 1993 worthless check charges on her 2008 Brunswick County Emergency Services application with Respondent, and for failing to notify Respondent, within five business days that she was charged with the criminal offense of "Simple Worthless Check" on June 5, 2008?

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner: Character Letters

For Respondent: 1 - 13

FINDINGS OF FACT

Certification Application

1. On or about January 14, 2008, Petitioner began employment with Brunswick County 911 as a telecommunicator. (Resp Exh 3) At that time, the Brunswick County 911 telecommunicators worked under the supervision of Brunswick County Emergency Services Center, and were not required to be certified by Respondent under 12 NCAC 10B .0401(b).

2. In 2008, the usual practice of the Brunswick County 911 Services Center was for 911 Operations Manager Stacey Stevens and Director Tom Rogers to handle all 911 employees' paperwork for certification with Respondent. That is, the employee would complete the required paperwork for Respondent, and Stevens would submit the certification application information to Respondent on that employee's behalf. (Kimberly Lewis and Petitioner's testimony)

3. On or about May 22, 2008, Petitioner chose to complete, and signed a justice officer certification application, Form F-3 Personal History Statement, to apply for certification with Respondent through the Brunswick County Emergency Services. Petitioner obtained three local criminal record checks which showed pending Onslow County "Simple Worthless Check" charges, of which Petitioner was previously unaware, and Brunswick County "Simple Worthless Check" convictions which Petitioner had paid restitution. In completing her Form F-3, Petitioner listed the 1997 Onslow County worthless check convictions, and Brunswick County worthless check pending charges on her Form F-3.

4. Petitioner informed Stevens of her 1997 Onslow County worthless check convictions, and her Brunswick County worthless check pending charges, and showed Stevens the completed paperwork such convictions and charges. Ms. Stevens advised Petitioner to take care of the pending charges with the magistrate, and provide her with the receipts and/or paperwork after resolving such charges.

5. Stevens also advised Petitioner not to list any of her worthless check convictions on her Form F-3 (Resp Exh 10), because Petitioner had taken care of, or paid restitution, for those charges to the magistrate, and was not convicted in a court setting.

6. Question No. 47 of the Form F-3 asked Petitioner to disclose whether she had ever been arrested or otherwise charged with a criminal offense, and if so, to provide the offense charges, the charging law enforcement agency, date of the offense, and disposition of the matter. The instructions provided that if any doubt exists in the applicant's mind about whether she was charged criminally, she should answer "yes."

7. Based on Ms. Stephens' instruction, Petitioner omitted her "Simple Worthless Check" convictions and charges in answering questions No. 47 and 53 on her Form F-3. Petitioner submitted that Form F-3 to Stevens, and assumed Stevens would submit such paperwork to Respondent in accordance with that agency's practice at that time. Stevens submitted Petitioner's initial application packet, along with Petitioner's Form F-3, to Respondent for certification. (Resp Exh 3)

8. Petitioner signed her F-3 before a Notary, affirming that her answers in her Form F-3 were true and complete. The F-3 certification cautioned that any misstatement or omission could result in Respondent denying Petitioner's certification, and that Petitioner had a continuing duty to update all information contained in the Form F-3. When Petitioner answered question no. 47, she had been convicted of five "Simple Worthless Check" offenses in Onslow County under Robin Walcott, Petitioner's maiden name. (Resp Exh 3)

9. On May 29, 2008, Respondent received Petitioner's initial application packet from the Brunswick County 911 Emergency Services Center, including Petitioner's Form F-3, a Report of Appointment form, and criminal records checks showing Petitioner's four pending Brunswick County "Simple Worthless Check" charges, and three 1997 Onslow County "Simple Worthless Check" convictions.

10. Subsequently, Stevens informed Petitioner that an AOC criminal record check showed she had another worthless check charge in Brunswick County. Stevens told Petitioner to pay the fines, and bring Stevens the receipts showing Petitioner had paid restitution.

11. On June 5, 2008, Petitioner was served with that "Simple Worthless Check" charge, offense date of 8/20/2007, in Brunswick County.

12. On July 31, 2008, Respondent received another Report of Appointment Form for Petitioner from Brunswick County 911 Director Tom Rogers. Petitioner had signed the Report of Appointment form on July 24, 2008, after being served with the 8/20/2007 "Simple Worthless Check" charge on June 5, 2008.

13. On August 5, 2008, Petitioner pled guilty to the 8/20/2007 "Simple Worthless Check" charge, and to four pending "Simple Worthless Check" charges in Brunswick County, and paid restitution on all such charges.

14. Additional criminal record checks revealed Petitioner had five worthless check convictions in Onslow County from 1993 and 1995. By letter dated October 3, 2008, Respondent sent a letter to Petitioner, at Petitioner's known mailing address, requesting additional missing information for her certification application, including an explanation why Petitioner failed to list those offenses on her Personal History Statement, Form F-3. Respondent's documentation showed that a Deputy Sheriff served this letter on Petitioner on November 3, 2008. (Resp. Exh. 13)

15. On November 12, 2008, Respondent received an updated Personal History Statement from Petitioner listing all twelve worthless check convictions. (Resp Exh 3, p. 3)

16. In 2008, Respondent made no decision regarding Petitioner's certification status. By letter dated February 15, 2010, and sent to Brunswick County 911 Director Tom Rogers, Respondent advised Rogers that Petitioner's certification application continued to lack information in five areas.

17. In 2010, Respondent received additional information regarding Petitioner's certification. Respondent reserved ruling on Petitioner's certification, and held her application in a "pending" status until 2013 as her application still lacked certain required information.

18. As of July 1, 2013, the Brunswick County 911 telecommunicators were transferred under the leadership of the Brunswick County Sheriff's Office. Once certification became mandatory for Brunswick County 911 employees, all 911 telecommunicators were required to complete an updated Form F-3, pass the CVSA, and complete a personal history background.

19. After the Brunswick County Sheriff's Office began managing the 911 Communications Services Center, Petitioner learned of all pending charges that Respondent had against Petitioner. The Sheriff's office gave Petitioner copies of her certification file, including all the correspondence between Respondent and Stacey Stevens and Tom Rogers. That was the first time Petitioner had seen the paperwork regarding her certification, or knew there was problem with her certification. In an undated letter to Respondent, Petitioner informed Respondent that her agency had discovered numerous issues with incorrect paperwork, lost paperwork, no records on file for training and other issues after Stacey Stevens left the 911 agency. (Resp. Exh. 2)

20. By letter dated December 23, 2013, Respondent's Probable Cause Committee denied Petitioner's justice officer certification application for being convicted of the following twelve misdemeanor worthless check offenses:

Brunswick County

- a. 2000CR 057037 Simple Worthless Check on 8/05/2008 – Guilty
- b. 2000CR 057038 Simple Worthless Check on 8/05/2008 – Guilty
- c. 2000CR 057039 Simple Worthless Check on 8/05/2008 – Guilty
- d. 2008CR 050355 Simple Worthless Check on 8/05/2008 – Guilty

Onslow County

- e. 1997CR 002957 Simple Worthless Check on 3/14/1997 – Guilty
- f. 1997CR 012661 Simple Worthless Check on 8/04/1997 – Guilty
- g. 1993CR 018398 Simple Worthless Check on 12/05/1993 – Guilty
- h. 1993CR 019368 Simple Worthless Check on 12/05/1993 – Guilty
- i. 1995CR 019503 Simple Worthless Check on 11/11/1993 – Guilty
- j. 1993CR 019504 Simple Worthless Check on 11/11/1993 – Guilty
- k. 1993CR 019505 Simple Worthless Check on 11/11/1993 – Guilty

Brunswick County

1. 2008CR 052804 Simple Worthless Check on 8/05/2008 – Guilty

Simple Worthless Check Convictions

21. At hearing, Petitioner admitted that she pled guilty, and was convicted of the above-cited twelve “Simple Worthless Check” offenses from 1993 through 2000. Petitioner admitted to writing five worthless checks in 1993 after being transferred with her job to Jacksonville NC, and trying to support herself during her first time moving away from home. She admitted writing four worthless checks in 2000 after she had separated from her husband, and was trying to support herself and her child without any support. Petitioner wrote two worthless checks in 2007, while trying to take care of her father, herself, and her child after her father had gotten a DWI shortly after her mother had passed away. These were difficult times, and Petitioner had to float checks to feed her family. She didn’t mean to bounce any checks.

Material Misrepresentation

22. At hearing, Petitioner acknowledged, and took full responsibility for failing to list the 1997 Onslow County “Simple Worthless Check” convictions, and pending Brunswick County “Simple Worthless Check” charges on the Form F-3 in May of 2008. She explained how initially, she listed these convictions and pending charges on her Form F-3 in 2008. However, after Operations Manager Stevens reviewed Petitioner’s Form F-3, Stevens advised Petitioner that she did not have any criminal convictions to list, because she had not been convicted in a court setting, and had paid restitution to the magistrate for such charges. Based on Stevens’ statement, Petitioner did not list the “Simple Worthless check” convictions on her Form F-3 that she gave to Stevens.

23. On or after May 22, 2008, Ms. Stevens submitted Petitioner’s certification application, along with Petitioner’s AOC criminal record checks, to Respondent on Petitioner’s behalf. (Resp Exh 10)

24. Petitioner did not intentionally fail to disclose any criminal convictions or pending criminal on her May 22, 2008 Form F-3 in order to deceive, defraud or misrepresent her criminal history to Respondent. However, she trusted Ms. Stevens, and relied on her advice not to list such charges and convictions on her Form F-3. Petitioner now knows she should have listed all criminal charges and convictions on the Form F-3.

Failure to Notify of Criminal Charges

25. On June 5, 2008, Petitioner was served and charged with a “Simple Worthless Check” with offense date of 8/20/07. This was fourteen days after Petitioner signed her Form F-3 on May 22, 2008. Petitioner never reported this offense to Respondent.

26. At hearing, Respondent’s Deputy Director, Diane Konopka, opined that all

applicants for telecommunicator certification are required to report all criminal charges to Respondent pursuant to 12 NCAC 10B .-301(a)(7). All applicants for certification are taught the five day reporting requirement contained in 12 NCAC 10B .0301(a)(7) during the orientation block of the Telecommunicator Officer Certification Course. Petitioner completed the Certification Course on April 4, 2008, and scored a 90% on the orientation block of training. (Resp Exh 7)

27. Ms. Konopka contacted Brunswick County Emergency Services and asked if that agency advised applicants they are to report criminal charges to Respondent's Division staff. By letter dated July 26, 2013, Stacey Stevens advised Respondent that her agency explained the original application process to each applicant and made each applicant aware of the requirements printed on the signature page of the required paperwork. She advised that "local policy also dictates notification of any charges by all employees." (Resp Exh 9)

28. On October 14, 2013, Ms. Stevens resigned as the Brunswick County 911 Operations Manager after being questioned about several employees' files and training paperwork not being turned into Respondent, and being incomplete. (Petitioner's Response to Respondent's Interrogatories)

29. At hearing, Petitioner denied failing to notify Respondent, within 5 days of being charged on June 5, 2008, for writing a worthless check (offense date 8/20/07). She explained that Operations Manager Stevens advised Petitioner of the "Simple Worthless Check" charge (offense date 8/20/07), and advised Petitioner to pay the fines and bring her the paid receipts. On August 5, 2008, Petitioner pled guilty to the 8/20/07 offense, paid restitution on that charge, and gave all her paperwork and receipts to Ms. Stevens to turn into Respondent. Petitioner trusted Ms. Stevens would report the new worthless check offense to Respondent in accordance with her agency's practice. Petitioner also thought Ms. Stevens had reported the matter to Respondent on her behalf, as that was the usual practice at the 911 Emergency Services Center.

Character Letters

30. Without objection from Respondent, Petitioner introduced six letters into evidence attesting to Petitioner's character. Brunswick County Sheriff John W Ingram opined that Petitioner is a very reliable and efficient worker in all areas of her supervisory position, does not complain about work, is well-respected, and well-liked by her coworkers. Ingram opined that Petitioner is of good moral character, and a phenomenal employee. He is happy to have her working for him.

31. Brunswick Communications Directors Lt. Todd Coring described Petitioner as a hard, dedicated, and loyal worker who knows her job, is very professional and dependable, and volunteers to work overtime without delay or complaint.

32. Brunswick Communications Director Kimberly Lewis noted that Petitioner is an instrumental part of her team who is well-liked, and an asset to their agency. Petitioner strives to instill her exceptional work ethic in the new employees she trains.

33. Petitioner's shift supervisor, Jonathan R Talley opined that Petitioner is of good moral character and is very organized, efficient, and extremely competent.

34. Alisha Beth Sue-Craft has worked with Petitioner for three years, and knows that Petitioner is very good at her job. She described how Petitioner has the patience of Job, and is very loyal. Sue-Craft explained that Petitioner paid for the worthless checks she wrote, and accepted fault for writing the worthless checks. She opined that the person(s) handling Petitioner's and other employees' certification paperwork in 2008 [Stacey Stevens] lacked good management skills.

35. In 2011, Sue-Craft completed her own sheriff's standards packet with Ms. Stevens' help. Sue-Craft was given all types of excuse when she questioned Stevens about her own paperwork. She explained that Petitioner and the 911 employees trusted their manager, Ms. Stevens, and Stevens failed.

CONCLUSIONS OF LAW

1. The parties are properly before the Office of Administrative Hearings in that the Office of Administrative Hearings has subject matter and personal jurisdiction in this matter, and each party received proper notice of hearing.

2. Pursuant to 12 NCAC 10B .0204(d), Respondent may revoke, suspend or deny the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer has committed or been convicted of:

(5) Any combination of four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(a) as a Class A misdemeanor or defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor regardless of the date of commission or conviction.

3. Pursuant to 12 NCAC 10B .0103(2), "convicted" or "conviction" means and includes, for purposes of this Chapter, the entry of a (A) guilty plea, (B) a verdict or finding of guilt by a jury, judge, magistrate, or other duly constituted, established, and recognized adjudicating body, tribunal, or official, either civilian or military, (C) a plea of no contest, nolo contendere, or the equivalent.

4. 12 NCAC 10B .0103 defines "Class A misdemeanor" as an act committed or omitted in violation of any common law, duly enacted ordinance or criminal statute of this state, which is not classified as a Class B misdemeanor pursuant to Sub-item(10)(b) of this Rule. 12 NCAC 10B .0103 defines a "Class B misdemeanor" as an act committed or omitted in violation of any common law, criminal statute, or criminal traffic code of this state which is classified as a Class B Misdemeanor, as set forth in the "Class B Misdemeanor Manual" published by the North Carolina Department of Justice.

5. Pursuant to 12 NCAC 10B .0205(3)(d), when Respondent Commission denies a justice officer certification, the period of sanction shall be for an infinite period, but continuing

so long as the stated deficiency, infraction, or impairment continues to exist, where the cause of sanction is commission or conviction of offenses as specified in 12 NCAC 10B .0204(d)(5).

Violation of 12 NCAC 10B .0204(a)(5)

6. The undisputed evidence at hearing proved that Petitioner was convicted of twelve separate “Simple Worthless Check” offenses in violation of N.C. Gen. Stat. § 14-107 from 1993 through 2000. Petitioner’s fourth and subsequent worthless check offenses are considered Class B misdemeanors, as defined in the “Class B Misdemeanor Manual” published by the North Carolina Department of Justice. Based upon the combination of three Class A misdemeanor convictions of “Simple Worthless Check” in violation of N.C. Gen. Stat. § 14-107(d)(1), and nine Class B misdemeanor convictions of “Simple Worthless Check,” Petitioner failed to comply with Respondent’s rule at 12 NCAC 10B .0204(d)(5). Petitioner’s application for certification application is therefore subject to denial for an indefinite period pursuant to 12 NCAC 10B .0204(d)(5).

7. Pursuant to 12 NCAC 10B .0205(3)(e), Respondent may either reduce or suspend the periods of sanction where the denial of certification is based on Subparagraph .0204(d)(5), or substitute a period of probation in lieu of revocation, suspension, or denial following an administrative hearing. Respondent may use its authority to reduce or suspend the period of sanction when extenuating circumstances brought out at the administrative hearing warrant such a reduction or suspension.

8. In this case, Petitioner presented extenuating circumstances sufficient for Respondent to justify substituting a period of probation for violating 12 NCAC 10B .0205(a)(5), in lieu of denying of Petitioner’s justice officer application for certification .

Material Misrepresentation

9. 12 NCAC 10B .0204(c)(1) and (2) provides:

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

(1) Has knowingly made a material misrepresentation of any information required for certification or accreditation from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission. This Subparagraph also applies to obtaining or attempting to obtain in-service firearms requalification as required by 12 NCAC 10B .2000 and .2100;

(2) Has knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, obtained or attempted to obtain credit, training or certification from the Commission or the North Carolina Criminal Justice Education and Training Standards

Commission. This Subparagraph also applies to obtaining or attempting to obtain in-service firearms requalification as required by 12 NCAC 10B .2000 and .2100;

10. The evidence at hearing failed to establish that Petitioner intentionally misrepresented and falsified her criminal background on her initial Form F-3 in order to misrepresent, deceive, or defraud Respondent about her criminal background.

a. The preponderance of the evidence showed that the normal practice of Brunswick County 911 telecommunicators in 2008 was for a telecommunicator to complete the Form F-3, and give it to Operations Manager Stacey Stevens, who would mail all required certification documents to Respondent for that employee. Petitioner and other employees relied upon Ms. Stevens for her advice on those certification matters, and trusted Stevens would mail their certification application documents to Respondent. Yet, Brunswick County 911 discovered numerous issues with incorrect paperwork, lost paperwork, and no records on file for training after Stacey Stevens left the 911 agency.

b. In 2008, Petitioner listed the “Simple Worthless Check” charges, that she knew about, on her Form F-3 before talking with Ms. Stevens. After talking with Stevens, Petitioner relied on Stevens’ statement that Petitioner did not need to list her charges or convictions on the F-3, because she was not convicted in a court setting, and had paid restitution to the magistrate on such charges. Only after reviewing the Form F-3 with Ms. Stevens, did Petitioner omit her “Simple Worthless Check” charges or convictions on the 2008 Form F-3.

c. When Petitioner’s certification application was sent to Respondent in 2008, Petitioner attached her criminal background checks, listing her worthless check convictions and pending charges to Petitioner’s May 22, 2008 certification application. Attaching her criminal record checks to her certification application showed Petitioner was not trying to deceive or misrepresent her criminal background to Respondent. In November 2008, Petitioner sent an updated Form F-3 to Respondent listing all of her “Simple Worthless Check” convictions. Based on the foregoing, Petitioner did not violate 12 NCAC 10B .0204(c)(1) and (2)

Failure to Notify

11. 12 NCAC 10B .0301 Minimum Standards for Justice Officers states in part:

(a) Every justice officer employed or certified in North Carolina shall:

...

(7) make the following notifications:

(A) within five business days, notify the Standards Division and the appointing department head in writing of all criminal offenses with which the officer is charged. This

12. 12 NCAC 10B .0401 Certification of Personnel states:

(a) . . . every person performing the duties of a telecommunicator as defined in 12 NCAC 10B .0103(15) and who is under the direct supervision and control of the Sheriff, shall meet the certification requirements of this Subchapter.

(b) Every person performing the duties of a telecommunicator as defined in 12 NCAC 10B .0103(15) who is not under the direct supervision and control of the Sheriff, may be appointed to the Division by the employing entity for purposes of obtaining certification; and if so appointed, shall meet the requirements of this Subchapter.

13. In this case, Respondent's Probable Cause Committee found probable cause to deny Petitioner's justice officer certification, because Petitioner failed to notify Respondent within 5 business days that she had been charged and served with a "Simple Worthless Check" offense (offense date 8/20/07) on June 5, 2008. At that time, the Brunswick County 911 Emergency Services Center was not under the leadership of the Brunswick County Sheriff's office, and thus, the 911 telecommunicators were not required to be certified by Respondent. Although Petitioner had been apprised of the duty to report criminal charges against her, under 12 NCAC 10B. 0301(a)(7), Petitioner failed to report such charge to Respondent.

14. Petitioner reported the 8/20/07 "Simple Worthless Check" charge to the 911 Operations Manager Stacey Stevens, and relied upon Stevens to report such charge to Respondent, based on the normal reporting practice of the 911 Center in 2008.

15. At hearing, Petitioner presented six character letters, ranging from coworkers to supervisors, to Brunswick County Sheriff Ingram, establishing her professionalism, good work ethic, and good reputation as a telecommunicator within Brunswick County. Petitioner also appeared to be a sincere and credible witness who accepted responsibility for her past mistakes.

16. There is sufficient evidence to deny Petitioner's justice officer certification application for violating the 5 day reporting requirement in 12 NCAC 10B .0301. However, given the extenuating circumstances presented by Petitioner at hearing, including her reliance on an employee who was not performing her job, the circumstances surrounding Petitioner's application for certification justify Respondent imposing a lesser sanction than denying Petitioner's certification.

PROPOSAL FOR DECISION

Based on the foregoing facts and Conclusions of Law, the undersigned proposes Respondent **DENY** Petitioner's justice officer certification for a specified time period for violating 12 NCAC 10B .0204(d)(5) and 12 NCAC 10B .0301(a)(7). However, Petitioner presented extenuating circumstances at the administrative hearing to support Respondent exercising its authority under 12 NCAC 10B .0205(3)(e) to substitute a probationary certification period, in lieu of a denial of Petitioner's certification.

NOTICE

The North Carolina Sheriffs' Education and Training Standards Commission will make the Final Decision in this contested case. 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). In accordance with N.C. Gen. Stat. § 150B-36(b), each agency shall also serve a copy of the Final Decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, North Carolina, 27699-6714.

This 3rd day of October, 2014.

Melissa Owens Lassiter
Administrative Law Judge