

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
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APPEARANCES

ISSUES

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BASED UPON careful consideration of the sworn testimony of the witnesses present at the hearing, the documents, and exhibits received and admitted into evidence, and the entire record in the proceeding, the undersigned Administrative Law Judge (“ALJ”) makes the following Finding of Fact. In making these Findings of Fact, the ALJ has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors by judging credibility, including, but not limited to the demeanor of the witnesses, 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. In the absence of a transcript, the Undersigned relied upon her notes and listened to audiotapes of the hearing to refresh her recollection.

FINDINGS OF FACT

1. Petitioner obtained employment as a detention officer with the Mecklenburg County Sheriff’s Office in 1995. Petitioner then obtained his justice officer certification for deputy sheriff through the North Carolina Sheriffs’ Education and Training Standards Commission (hereinafter “Commission”) in 1998. Petitioner was certified through the Commission and was employed at the Mecklenburg County Sheriff’s Office until his retirement on December 1, 2013. (Respondent’s Exhibit 3) Petitioner’s current certification through the Commission will expire on December 1, 2014 because Petitioner is not currently employed at a Sheriff’s Office.

2. Petitioner retired early from the Mecklenburg County Sheriff’s Office due to an arrest on September 16, 2013, for assaulting his girlfriend, Ms. Bridget Wardlow (hereinafter “Ms. Wardlow”). Petitioner admitted to arresting officers that he punched Ms. Wardlow in the face with a closed fist because she would not return his wallet.

3. The Petitioner testified at the administrative hearing that he punched Ms. Wardlow in the face on September 16, 2013 and that he was justified in punching Ms. Wardlow because she had his wallet.

4. Petitioner and Ms. Wardlow were involved in an intimate dating relationship at the time Petitioner punched Ms. Wardlow. The two had dated for approximately 5 years. Petitioner stated their relationship was “on and off.” Petitioner admitted that he and Ms. Wardlow were still involved in a sexual relationship on September 16, 2013.

5. Petitioner took a day off from work on September 16, 2013 in order to take his daughter to the doctor. When Petitioner woke up on that day he noticed that Ms. Wardlow had called his cell phone several times. Petitioner returned the call and learned that Ms. Wardlow was outside Petitioner’s residence and that she wanted to talk. Petitioner met Ms. Wardlow at the front door of his residence and the two decided they would discuss matters at an alternate location to avoid any embarrassment at Petitioner’s place of residence.

6. Petitioner and Ms. Wardlow left Petitioner’s residence in separate vehicles and met each other at the Hess gas station near Petitioner’s residence. Petitioner and Ms. Wardlow

engaged in a heated argument while at the Hess gas station. Ms. Wardlow did not want Petitioner to leave because the two had not finished their discussion.

7. Petitioner and Ms. Wardlow decided to leave the Hess gas station because there were too many people at that location. They went to the CiCi's Pizza in the Wexford Plaza Shopping Center. Petitioner exited his vehicle and left his wallet on the front seat of his car. Petitioner then approached Ms. Wardlow's vehicle and the two continued to argue about their relationship. At some point during the discussion, Ms. Wardlow went to the driver's side of Petitioner's vehicle, which was locked. Petitioner wanted to leave but Ms. Wardlow insisted that the two were not done with their discussion.

8. Petitioner attempted to unlock his vehicle with the remote key in order to jump in the passenger seat of the vehicle. Ms. Wardlow reached into the vehicle and grabbed Petitioner's wallet so he could not leave.

9. Ms. Wardlow and Petitioner then got back into Petitioner's vehicle and continued to argue. Ms. Wardlow stated to Petitioner that if Petitioner did not tell Alicia about their relationship, she was going to find out about it at some point. Petitioner was angered by this and struck Ms. Wardlow in the face with a closed fist. Ms. Wardlow exited Petitioner's vehicle immediately and ran to her car. Ms. Wardlow called 911 and advised that she had been punched in the face by her boyfriend, who was a deputy with the Mecklenburg County Sheriff's Office.

10. Ms. Wardlow was visibly upset when Officer J.P. Dawson with the Charlotte Mecklenburg Police Department ("CMPD") arrived. Petitioner admitted to Officer Dawson that he punched Ms. Wardlow in the face. Petitioner also stated to the police that he was not going to give the police any trouble.

11. Officer S.P. Scanlon with CMPD also responded to Petitioner's domestic violence call. Officer Scanlon was responsible for taking down a statement that Ms. Wardlow dictated to the officer. She advised that Petitioner and Ms. Wardlow had been arguing about their relationship. Ms. Wardlow wanted Petitioner to tell the truth about another woman named Alicia that Petitioner had been seeing. Petitioner was agitated and upset during the conversation. Ms. Wardlow told Petitioner that he should just tell Alicia about their relationship because she was going to find out anyway. Petitioner became agitated further and punched Ms. Wardlow in the face with a closed fist.

12. Petitioner was charged with assault on a female in violation of North Carolina General Statutes § 14-33 (c)(2). Petitioner's criminal trial resulted in a not guilty verdict.

14. Petitioner called several witnesses who testified regarding Petitioner's ability to perform his duties as a sworn justice officer, that they believed Petitioner to be a good person and a good law enforcement officer. None of these witnesses were aware of the events leading up to the assault.

CONCLUSIONS OF LAW

1. To the extent that certain portions of the foregoing Findings of Fact constitute mixed issues of law and fact, such Findings of Fact shall be deemed incorporated herein by reference as Conclusions of Law. Similarly, to the extent that some of these Conclusions of Law are Findings of Fact, they should be so considered without regard to the given label.
2. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, both parties received notice of hearing, and that the Petitioner received by mail the proposed Revocation of Justice Officer's Certification letter, mailed by Respondent Sheriffs' Commission on March 18, 2014.
3. The North Carolina Sheriffs' Education and Training Standards Commission has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify justice officers and to deny, revoke, or suspend such certification.
4. 12 NCAC 10B .0204(d)(1) provides that the Sheriffs' Commission may revoke the certification of a justice officer when the Commission finds that the officer has committed or been convicted of a crime defined as a Class B misdemeanor, which occurred after the officer's date of appointment through the Respondent Commission.
5. Assault on a Female in violation of N.C.G.S. § 14-33 (c)(2) is classified as a Class B misdemeanor pursuant to 12 NCAC 10B .0103 (10)(b) and the Class B Misdemeanor Manual adopted by Respondent.
6. A preponderance of the evidence presented at the administrative hearing establishes that Petitioner intentionally assaulted Ms. Wardlow on September 16, 2013.
7. Petitioner exhibited a lack of integrity through his actions and also exhibited a lack of respect for the laws of this state. Petitioner engaged in this unacceptable conduct while holding certification as a sworn justice officer.
8. Pursuant to 12 NCAC 10B .0301(a)(8), every justice officer employed or certified in North Carolina shall be of good moral character. 12 NCAC 10B .0204(b)(2) further provides the Sheriff's Commission shall revoke, deny, or suspend a justice officer's certification when the Commission finds that the justice officer no longer possesses the good moral character that is required of all sworn justice officers.
9. Good moral character has been defined as "honesty, fairness, and respect for the rights of others and for the laws of the state and nation." In Re Willis, 288 N.C. 1, 10 (1975).
10. Given the totality of the evidence presented at the administrative hearing, the Undersigned concludes Petitioner no longer possesses the good moral character that is required of a sworn justice officer in this state.

11. Petitioner engaged in an act of assault against his girlfriend at a time when Petitioner held a justice officer certification through the State of North Carolina. Based on the evidence presented at the administrative hearing, Respondent's proposed revocation of Petitioner's justice officer certification due to Petitioner's lack of good moral character and failure to maintain the minimum standards required of all sworn justice officers under 12 NCAC 10B .0301 is supported by a preponderance of the evidence.

PROPOSAL FOR DECISION

BASED UPON the foregoing Findings of Fact and Conclusions of Law and pursuant to 12 NCAC 10B .0205 (2), the undersigned recommends Respondent revoke the Petitioner's Justice Officer Certification for a period not less than five (5) years based on Petitioner's commission of the Class B misdemeanor offense of assault on a female in violation of North Carolina General Statute § 14-33 (C) (2). The Undersigned further recommends the Respondent revoke Petitioner's certification for an indefinite period due to Petitioner's failure to maintain the good moral character that is required of sworn justice officers under 12 NCAC 10B .0300.

NOTICE

The Agency making the Final Decision in this contested case are 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 Sheriffs' Education and Training Standards Commission.

This the 21st day of November, 2014.

Selina M. Brooks
ADMINISTRATIVE LAW JUDGE