

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14 DOJ 03030

SHAWN QUINCY BROMELL,)
)
Petitioner,)
)
v.)
)
N.C. SHERIFFS' 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 Raleigh, 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 to the Clerk's Office of the Office of Administrative Hearings on November 21, 2014 which was received by the Undersigned on November 24, 2014. The Undersigned held the record open for seven additional business days for further submissions. Receiving nothing further from either party, the record was closed on December 4, 2014.

APPEARANCES

For Petitioner: William J. Cotter
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For Respondent: Matthew L. Boyatt
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ISSUE

Did Petitioner conspire to conceal shift and time worked at a secondary employment at Food Lion and enter fraudulent information into the Durham Police Department's secondary employment tracking system thereby failing to meet minimum standards for certification as a justice officer?

EXHIBITS

Petitioner's Exhibits 1-3 were introduced and admitted.

Respondent's Exhibits 1-17 were introduced and admitted.

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. Shawn Quincy Bromell was a Durham Police Officer for approximately thirteen years and was asked to resign or be fired and in fact did resign in December 2010.
2. Officer Bromell is currently a Detention Officer with the Durham County Sheriff's Department at the Durham County Jail and has been for approximately one and a half years from the date of request for hearing.
3. Officer Bromell, along with Durham Police Officer Everette Jeffries, was accused by the Durham Police Department with entering fraudulent information into the Durham Police Department's CYA System. The CYA System is what is used for police officers to log in their time for off duty work so that the Durham Police Department can keep track of their off duty work. Both officers entered into the system that Officer Bromell substituted for Officer Jeffries at Food Lion on August 25, 2010.

4. Officer Jeffries testified at this hearing. He described the CYA system and the normal practice followed by all officers of the Durham Police Department. Officer Jeffries' testimony was informative and credible.
5. Officer Bromell was also accused of taking timesheets from Food Lion without permission on September 11, 2010.
6. As a result of the Durham Police Department Internal Affairs' investigation, Officer Jeffries was not fired or asked to resign but rather was punished by the Durham Police Department with 40 hours without pay and 18 months without being able to perform secondary employment.
7. As a result of the Durham Police Department Internal Affairs' investigation, Officer Bromell was asked to resign or be fired and he chose to resign.
8. Deputy Chief S.M. Mihaich of the Durham Police Department on December 9, 2010 in a written document stated the following: "The evidence in this case is clear. Officer Bromell took financial records from Food Lion without authority or permission which amounts to larceny. Police Officers are held to a higher standard, as they should be, and theft cannot be tolerated under any circumstances. I therefore concur with the recommendation of termination in this case."
9. When Officer Bromell initially talked to Internal Affairs at the Durham Police Department in October 2010 he was not sure whether or not he had permission to take time sheets where the officers keep their time for their off duty employment at Food Lion.
10. Officer Bromell was not allowed by the Durham Police Department to talk to anybody about this during the investigation and as a result was not able to talk to Diana Soper, who was a supervisor at Food Lion at the time.
11. Officer Bromell was able to talk to Ms. Soper sometime after the investigation and she reminded him that he did in fact ask for permission and she did give him permission to take the time sheets home with him.
12. Officer Bromell thought he had a problem with his pay check and wanted to take the time sheets home so he could go over them with his records to determine if his check was in fact correct. It turns out it was correct and he subsequently cashed the check.
13. Diana Soper testified at this hearing. She was a supervisor at Food Lion in August and September of 2010 and was the person responsible for the time sheets.
14. Ms. Soper remembers September 11, 2010, the day Officer Bromell took the time sheets, because Bromell had asked her to call him at 7:00 am that morning so that he would not miss his shift. She did call him and he did come in that morning, asked for the time sheets and took them with her permission.

15. Ms. Soper had already transferred the information from the time sheets that were taken by Officer Bromell onto the permanent Food Lion records, which was her responsibility. She did it on that Sunday morning prior to Officer Bromell taking the time sheets with him.
16. Although Diana Soper was the “go to” person for the time sheets at Food Lion and ultimately responsible for them, nobody from the Durham Police Department contacted her about the time sheets that she authorized Officer Bromell to take with him and no one else ever questioned her about that fact.
17. Sergeant Vaughn, who testified at this hearing, worked for Durham Police Department Internal Affairs in 2010, and conducted the investigation of Officers Bromell and Jeffries. Sergeant Vaughn stated that he was somewhat familiar with the CYA System in 2010 but admitted that it was a confusing system and that there have been significant changes made to it since 2010 to make it more accurate and more predictable with more rules.
18. Officer Jeffries was investigated by Internal Affairs for making the false entry into the CYA System but was not investigated concerning the larceny of the timesheets at Food Lion.
19. Officer Bromell made the same error that Officer Jeffries made when he relied on Officer Jeffries’ information concerning the substitution for Officer Jeffries at Food Lion on August 25, 2010.
20. Officer Bromell did in fact substitute shifts with Officer Jeffries in August, 2010 but not on August 25, 2010.
- 21.. Officer Bromell was following the accepted practice of the Durham Police Department at the time when he substituted his off duty work with Officer Jeffries.
22. Officer Jeffries was also following the acceptable practices of the Durham Police Department at the time that Officer Bromell substituted his off duty work with him.
23. Three character witnesses testified for Officer Bromell. They were Sergeant Jeffrey Hodder, his direct supervisor, Lieutenant Sharon Sowell, a person in his chain of command, and Captain Cynthia Kornegay, also a person in Petitioner’s chain of command. All three witnesses stated that Officer Bromell was a hard worker, honest, a man of integrity and an asset as a Durham County Detention Officer at the Durham County Jail.
24. Captain Kornegay had no doubts regarding Officer Bromell’s truthfulness and good character. Lieutenant Sowell stated Petitioner has never been disciplined and is outstanding in his job.
25. Sergeant Hodder stated that Officer Bromell was one of the best that he had, and he in fact wished he had a “whole force like him.” Sergeant Hodder testified that Officer Bromell was always up front with all people and never allowed stress to show or affect him. Further Officer Bromell never questioned his duty assignments, and was straight with his report writing which was unblemished

BASED UPON the foregoing Findings of Fact, the Undersigned makes the following Conclusions of Law.

CONCLUSIONS OF LAW

1. The evidence in this case overwhelmingly supports the conclusion that Officer Bromell did not steal time sheets at Food Lion and therefore did not commit the crime of larceny. At all times relevant in this matter he had permission to possess the time sheets from Ms. Diana Soper who was always the individual who input time and the person responsible for those time sheets
2. The evidence in this case overwhelmingly supports the conclusion that Officer Bromell did not conspire to conceal actual shifts and time worked at the secondary employment with Food Lion when he was allowed to remove the time sheets from the store log. Officer Bromell did not fraudulently and with knowing intent enter information into the Durham Police Department's secondary employment tracking system (CYA), but did make the same incorrect entry as Officer Jeffries.
3. The evidence in this case overwhelmingly supports the conclusion that Officer Bromell is an individual of excellent moral character.

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 totality of all evidence, including testimony and exhibits provided at the above-captioned case, the Undersigned holds that the Petitioner is a person of good moral character and should not be found to fail to meet the employment standards required by the Commission's rules. The Undersigned proposes that the Petitioner's request for certification as a Justice Officer be allowed.

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 Sheriffs' 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 addressed 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 14th day of January, 2015.

Augustus B. Elkins II
Administrative Law Judge