

**IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14 DOJ 05116**

PROPOSAL FOR DECISION

APPEARANCES

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

Is Respondent's proposed denial of Petitioner's law enforcement certification based upon Petitioner knowingly making material misrepresentations of any information required for certification supported by a preponderance of the evidence?

Is Respondent's proposed suspension of Petitioner's certification as a correctional officer based upon Petitioner knowingly making material misrepresentations of any information required for certification supported by a preponderance of the evidence?

What sanction, if any, should be imposed against Petitioner?

RULES AT ISSUE

12 NCAC 09G .0504(b)
12 NCAC 09G .0505(b)
12 NCAC 09A .0204(b)
12NCAC 09A .0205(b)

EXHIBITS

Petitioner's Exhibits 1-20 were introduced and admitted. (Exhibits 6 and 10-20 are letters of reference)

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. Both parties received Notice of Hearing, and Petitioner received the notification of the Proposed Denial of Law Enforcement Officer Certification and Proposed Suspension of Correctional Officer Certification letter mailed by the Respondent on June 12, 2014.
2. The North Carolina Criminal Justice Education and Training Standards Commission (hereinafter the "Commission") has the authority granted under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code to certify correctional officers and law enforcement officers, and to revoke, suspend, or deny such certification.

3. 12 NCAC 09G.0504(b) provides that the Commission may suspend, revoke, or deny the certification of a correctional officer when the Commission finds that the applicant for certification or the certified officer has knowingly made a material misrepresentation of any information required for certification or accreditation.
4. 12 NCAC 09G.0505(b) provides that when the Commission suspends or denies the certification of a correctional officer pursuant to 12 NCAC 09G.0504, the period of sanction shall be not less than three years; however, the Commission may either reduce or suspend the period of sanction under Paragraph (c) 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 or accreditation.
5. 12 NCAC 09A .0204(b) provides that 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 has knowingly made a material misrepresentation of any information required for certification or accreditation.
6. 12 NCAC 09A .0205(b) 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 or accreditation.
7. Petitioner obtained his Correctional Officer Certification from the Commission on May 2, 2012. Petitioner was employed as a corrections officer at Eastern Correctional Institution from May 2011 through January 2013. Petitioner resigned from Eastern Correctional Institution while under investigation for inefficient job performance.
8. On December 26, 2013, Petitioner applied for certification as a law enforcement officer through the Grifton Police Department. In furtherance of his application for certification, Petitioner submitted a Report of Appointment, Form F-5A, and an F-3 Personal History Statement. Petitioner made misrepresentations on these forms as set out below.
9. Petitioner completed the Form F-5A (LE) on December 26, 2013. On the Form F-5A, directly above the Petitioner's signature, is the following statement:

As the applicant for certification, 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 by 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. I further understand that I have a continuing duty to notify the Commission of all criminal offenses which I am arrested for or charged with, plead no contest to, plead guilty to or am found guilty of. If applicable, I specifically acknowledge that my continued employment and certification are contingent on the results of the fingerprint records check and other criminal history records being consistent with the information provided in my Personal History Statement and as reflected in this application. (Emphasis in original)

10. Petitioner was asked to disclose all criminal charges on the Form F-5A, to include charges that resulted in dismissal. Petitioner knowingly failed to disclose an injury to personal property charge (11CR 050404) on the Form F-5A.
11. On October 13, 2013, Petitioner completed the F-3 Personal History Statement in furtherance of his application for certification through the Grifton Police Department. Question number 47 of the Personal History Statement requested that Petitioner disclose all offenses other than minor traffic offenses. The instructions for this question provided the following statement:

Answer all of the following questions completely and accurately. Any falsification or misstatements of fact may be sufficient to disqualify you. If any doubt exists in your mind as to whether or not you were arrested or charged with a criminal offense at some point in your life . . . you should answer “Yes.”
12. Petitioner failed to disclose an injury to personal property charge (11CR 050404) on the F-3 Personal History Statement. Petitioner signed the Personal History Statement before a notary on October 10, 2013. In so doing, Petitioner attested that each statement provided on the Personal History Statement was true and complete.
13. Petitioner was asked about criminal charges he received during his mandatory background investigation through the Grifton Police Department. Petitioner’s responses to investigative questions were recorded in the Form F-8, “Mandated Background Investigation Form.” In question number 35, Petitioner was asked by the investigator whether he had been arrested, detained, or charged with a crime. Petitioner stated that he had not. In question number 38 of the Form F-8, Petitioner was asked whether he had ever been issued a criminal summons to appear in court. Petitioner answered no.
14. At the hearing of this matter, Petitioner testified regarding the facts that gave rise to him being charged with injury to personal property in case number 11CR 050404. Petitioner testified that he was not involved in causing the damage to the personal property cited, a 1999 Ford Taurus owned by Bobby Lee Supel, who was the stepfather of Petitioner’s then wife, Ashley Ward. Petitioner and Ms. Ward were residing at the residence of Mr. Supel in May of 2011. Ms. Ward had a falling out with her stepfather for being disrespectful, and as a result the couple was kicked out of Mr. Supel’s residence. Ms. Ward admitted to Petitioner that she had intentionally damaged her stepfather’s vehicle. Petitioner believes

Ms. Ward scratched Mr. Supel's vehicle on or about June 2, 2011, when the couple was moving furniture out of Mr. Supel's residence. Ms. Ward's stepfather brought criminal charges against both Ms. Ward and Petitioner for the damage to the Ford Taurus.

15. Petitioner recalled that a deputy sheriff served Petitioner with a misdemeanor criminal summons. Although the Petitioner does not recall exactly what the deputy said, the Petitioner does admit that he knew the deputy was serving him with a criminal summons for injury to personal property and that he would be required to go to court. The warrant introduced into the record reflects that Petitioner was served with the Summons in 11CR 050404 on June 6, 2011 and that a Greene County Sheriff's Office deputy effectuated service.
16. Petitioner was extremely concerned about being served with the criminal charge of injury to personal property. Petitioner discussed the charge with Ms. Ward prior to the court appearance on at least one occasion. He was worried that the criminal charge could have a negative impact on his employment with Eastern Correctional Institution, where Petitioner had just started as a correctional officer. Further, Petitioner was worried that the criminal charge could result in loss of money and possibly their home. Petitioner's testimony regarding his grave concerns related to this criminal charge is corroborated by Petitioner's written statement received by the Respondent on March 10, 2014. Petitioner wrote the criminal charge could "cost us unnecessary money, our home, or worst my job." (R. Ex. 8)
17. Petitioner admitted at the hearing of this matter that he appeared in court in order to dispose of 11CR 050404. Although Petitioner did not speak at length with the Assistant District Attorney, Petitioner did meet with Bobby Lee Supel outside of the courtroom. After a period of time, Mr. Supel agreed to dismiss the charges against Petitioner. At that point, Petitioner had contact with the prosecuting attorney who advised that the case would be dismissed and that Petitioner was free to leave court. The voluntary dismissal in 11CR 050404 corroborates Petitioner's testimony and states the case was dismissed at the request of the prosecuting witness. The date of the voluntary dismissal was July 1, 2011.
18. Petitioner was required to disclose all criminal charges on both the Form F-5A and the Form F-3 Personal History Statement submitted to Respondent. Petitioner recalled that a law enforcement officer personally served him with a criminal summons as well as discussing the criminal charge with his wife. Petitioner also appeared in court per the criminal summons and spoke with the victim, in addition to speaking with the assigned district attorney. Petitioner withheld information and failed to disclose the personal property charge on both the F-3 and F-5A forms. In addition, Petitioner withheld information from the investigator conducting Petitioner's background investigation, resulting in inaccurate responses on Petitioner's Form F-8 relating to criminal charges and the issuance of a criminal summons.
19. Petitioner made a misrepresentation on a Form F-5A when Petitioner was seeking certification through the Department of Correction. On March 28, 2011, Petitioner completed a Form F-5A, stating on the form that he had never used illegal drugs. However,

when seeking certification as a law enforcement officer through the Grifton Police Department, Petitioner completed his F-3 Personal History Statement and disclosed that he had used marijuana in 2008.

20. Petitioner testified that he did not disclose his prior drug use when he completed the Form F-5A in 2011. Petitioner testified that he was told by two corrections officers to answer “No” to the drug question because he was not currently using marijuana. In Petitioner’s written request for an administrative hearing, Petitioner explains that if his answer was no for that question he “was wrong for putting that down,” stating that he “was in a really tough situation.” (R. Ex. 2) In his proposal, Petitioner stated that his bad situation was not an excuse for his falsifying his paperwork. Further, in his proposal, Petitioner stated that the misrepresentation that occurred on his Correction Officer application was just bad decision making on his part.
21. By failing to disclose his marijuana use on the March 28, 2011 Form F-5A, Petitioner knowingly made a material misrepresentation of information required to be disclosed for certification.
22. Petitioner made misrepresentations to the Criminal Justice Standards Division regarding the nature of his separation from Eastern Correctional. Petitioner disclosed on his F-3 Personal History Statement submitted through the Grifton Police Department that Petitioner separated from Eastern Correctional “so I could focus on Basic Law Enforcement Training.” (R. Ex. 5) Further, in Petitioner’s background investigation through Grifton, Petitioner was asked whether he had ever been “disciplined, asked to resign, been terminated, or released due to any criminal misconduct or personal misconduct?” Petitioner answered no.
23. On October 22, 2012, Petitioner was advised in writing that an internal affairs investigation by the Department of Correction had been initiated against him. By letter dated November 28, 2012, Petitioner was removed from his duty station and was reassigned to Master Control. He was told not to have any contact or communication with any employee of the Department of Public Safety Adult Correction.
24. While performing hospital duty at Vidant Medical Center, Petitioner passed a note to a female care partner to give to a nurse which provided Petitioner’s name and phone number, and stated “hit me up.” When a Charge Nurse brought the note to Petitioner’s attention, he was sitting in a chair with an open laptop computer on and the screen illuminated which was against policy. By letter dated December 13, 2012, Petitioner was informed of the findings of the investigation and the intention to recommend disciplinary action for grossly inefficient job performance.
25. On December 17, 2012, Petitioner wrote an apology letter to the Department of Public Safety where he stated he “never intended to do anything wrong or to make myself or the Department look bad.” Petitioner further wrote that he felt he deserved “1 or even 2 18 month write ups for my actions,” and that he was “100% confident that there will be no future issues or problems out of me during my employment with DPS.” (R. Ex. 13)

26. The Department of Correction separation of Petitioner notes his resignation but comments that he was currently under investigation and could not be considered for rehire.
27. Petitioner's disclosure on his F-3 Personal History Statement that he left DOC to "focus on Basic Law Enforcement Training" is misleading and not completely accurate. While Petitioner may have intended during this time to focus on BLET which is not disputed, Petitioner separated while under investigation for grossly inefficient job performance.
28. By stating on question number 31 of his F-3 Personal History Statement that he left Eastern Correctional to focus on BLET, Petitioner knowingly provided misleading information to the Criminal Justice Standards Division. Further, Petitioner provided incomplete and misleading information to the investigator at the Grifton Police Department insofar as Petitioner was not completely forthcoming regarding his departure from Eastern Correctional.
29. Petitioner submitted twelve letters of reference including five letters from personal friends/acquaintances, a letter from Correctional Lieutenant James C. Marlowe, a letter from Winterville Chief of Police and Petitioner's primary BLET instructor, Ryan C. Willhite and five letters from classmates of Petitioner.
30. Lt. Marlowe stated that as a supervisor, he found Petitioner to be a good and dedicated employee who showed initiative and motivation to all duty assignments. He knows Petitioner to be polite and professional to all persons that he had dealings with at Eastern Correctional Institution.
31. Two personal letters were submitted by teachers both who found Petitioner to be a person who was dedicated, responsible and sincere. One found that he prided himself in accomplishing goals and possessed an impeccable resilience and faith driven tenacity. Another saw that he always displayed a great work ethic and cared deeply for friends and family. Both believed that he would have a positive and impactful influence on those around him and the community.
32. Petitioner submitted a letter from Sherrill Emmons, general manager of a local retail store. She hired Petitioner to be a department manager in her store. He assisted in opening the store including training associates. Emmons disclosed that in her 20 years working with the company she had not worked with a manager more responsible or hard working than Petitioner.
33. Winterville Police Officer Leigh W. Buckhout II, Robeson County Deputy William A. Thompson, Wake Forest Police Officer Brandon Love and Sgt. Matthew Beardsley, all BLET classmates of Petitioner submitted letters on his behalf. In no particular order the following descriptions were some of those set forth in those letters:

One of the most compassionate, hardworking, and honest guys I've ever met
Got along with everyone and in a sense, the glue that kept the class together

Dependable, skilled, consistent, dedicated, greatly respected
Team player, selfless, spent countless hours helping others study
Passion for law enforcement, love of country, an example many could learn from

34. James S. Hamilton with the Concord Police Department served as president of Petitioner's BLET class. As leader of the class Hamilton found that Petitioner "worked with everyone understanding that BLET was a team effort," and was that person who "often put the needs of others in front of his own." Hamilton stated that "if anyone deserves to have a job in law enforcement, I believe Ward does." (R. Ex. 16)
35. Winterville Chief of Police Ryan Willhite provided Petitioner with a character reference. He was Petitioner's primary instructor and coordinator during his BLET at Pitt Community College observing Petitioner on a daily basis for four months. Chief Willhite relays that Petitioner was "an exemplary student and leader among his peers" with a "performance, attitude and work ethic above reproach." Chief Willhite is aware of Petitioner's situation and "would not hesitate in making Mr. Ward a member of my department if the position became available." Chief Willhite further writes that understanding the standards of the Commission, he "would not be writing this letter if I did not feel strongly about Mr. Ward." (R. Ex. 17)

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.

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 this 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, Chapters 9G and 9A, to certify both correctional officers and law enforcement officers; and to revoke, suspend, or deny such certifications.
3. 12 NCAC 09G.0504(b) provides that the Commission may suspend, revoke, or deny the certification of a correctional officer when the Commission finds that the applicant for certification or the certified officer has knowingly made a material misrepresentation of any information required for certification or accreditation.
4. 12 NCAC 09A .0204(b) provides that 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 has knowingly made a material misrepresentation of any information required for certification or accreditation.

5. A preponderance of the evidence exists to support the conclusion that Petitioner knowingly failed to disclose an injury to personal property charge (11CR 050404) on the Form F-5A in December 2013. In addition, the greater weight of the evidence supports the conclusion that Petitioner failed to disclose an injury to personal property charge (11CR 050404) on the F-3 Personal History Statement in October 2013. Further, Petitioner withheld information from the investigator conducting Petitioner's background investigation in furtherance of his application for law enforcement officer certification through the Grifton Police Department, resulting in inaccurate responses in two questions on Petitioner's Form F-8 relating to criminal charges and the issuance of a criminal summons.
6. The preponderance of the evidence supports the conclusion that by failing to disclose his marijuana use on the March 28, 2011 Form F-5A, Petitioner knowingly made a material misrepresentation of information required to be disclosed for correctional officer certification.
7. The preponderance of the evidence supports the conclusion that by stating on question number 31 of his F-3 Personal History Statement that he left Eastern Correctional to focus on BLET, Petitioner knowingly provided misleading information to the Criminal Justice Standards Division.
8. Petitioner knowingly provided incomplete and misleading information to the investigator on the Form 8 at the Grifton Police Department insofar as Petitioner was not completely forthcoming regarding his departure from Eastern Correctional.
9. 12 NCAC 09G.0505(b) provides that the Commission may either reduce or suspend the period of sanction or substitute a period of probation in lieu of suspension of certification of a correctional officer following an administrative hearing, where the cause of sanction is material misrepresentation.
10. 12 NCAC 09A .0205(b) provides that the Commission may either reduce or suspend the period of sanction or substitute a period of probation in lieu of suspension of certification of a criminal justice officer following an administrative hearing, where the cause of sanction is material misrepresentation.
11. The totality of information received in this case overwhelmingly supports the conclusion that Petitioner is an individual of excellent character. Documents presented at the administrative hearing provided convincing evidence that circumstances exist to warrant Respondent imposing lesser sanctions instead of denial or suspension of Petitioner's certifications.

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, and specifically reviewing the character references in support of Petitioner, the Undersigned proposes that the Petitioner's certification as a law enforcement officer be granted on a probationary status as allowed by law. The Undersigned further recommends that Commission action on Petitioner's correctional officer certification be made not inconsistent with the above proposal.

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 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. It is requested that the agency furnish a copy to the Office of Administrative Hearings.

IT IS SO ORDERED.

This is the 19th day of May, 2015.

Augustus B. Elkins II
Administrative Law Judge