

STATE OF NORTH CAROLINA
COUNTY OF NORTHAMPTON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14 DOJ 05118

ARTHUR RANDALL GRIFFIN,)
)
 Petitioner,)
)
 v.)
)
 NORTH CAROLINA CRIMINAL)
 JUSTICE 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 Greenville, 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 submission of further materials. After Respondent's earlier submitted proposals and argument, Petitioner submitted his proposal for decision on April 6, 2015 at which time the record was closed.

APPEARANCES

For Petitioner: Gilbert Chichester
Attorney for Petitioner
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For Respondent: William P. Hart, Jr.
Attorney for Respondent
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ISSUES

1. Whether Petitioner knowingly made one or more material misrepresentations of any information required for certification?
2. What sanction, if any, should be imposed against Petitioner's justice officer certification?

EXHIBITS

Respondent's Exhibits 1-3 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. Petitioner started his career in law enforcement in 1996, as a detention officer with the Northampton County Sheriff's Office. In 1997 Petitioner was awarded certification as a full-time deputy with the Northampton County Sheriff's Office. In 1998 he obtained a part-time job with the City of Gaston Police Department where he served as a police officer. He separated from the Northampton Sheriff's Office in January 2000. On April 25, 2000, Petitioner was certified as a part-time deputy with the Halifax County Sheriff's Office and later separated from that position on November 22, 2002. In March 24, 2003, Petitioner was certified as a correctional officer with the North Carolina Department of Correction. On February 6, 2014, Petitioner was appointed as a part-time deputy with the Northampton County Sheriff's Office where he has been pending certification. Since August 17, 1998, Petitioner has been certified as a full-time justice officer with the Gaston Police Department, where he presently serves as Chief of Police.

2. Over 17 years ago, prior to the year 1998, Petitioner had been charged with the following offenses in the State of North Carolina, with the respective final dispositions indicated in parentheses: (1) communicating threats (Halifax Co. No. 88 CR 1373) (voluntarily dismissed); (2) assault on a female (Halifax Co. No. 88 CR 1374) (guilty of simple assault); (3) operate motor boat without fire extinguisher (Halifax Co. No. 88 CR 3735) (guilty); and, (4) fishing without a license (Warren Co. No. 85 CR 1386) (guilty).

3. In his application for appointment and certification as a justice officer with the Gaston Police Department in or about 1998, Petitioner was required to fill out, sign, and submit a

Form F-5A Report of Appointment/Application for Certification - Law Enforcement Officer. This document contains, *inter alia*, a section with the heading of "ALL APPLICANTS AND TRANSFERS READ AND COMPLETE THIS CRIMINAL RECORD SECTION." Petitioner did not mark or write upon any portion of this section. All other sections of the Form F-5A were completed in full.

4. Petitioner's signature on the Gaston P.D. Form F-5A, dated July 28, 1998, indicated, among other things, his understanding and agreement 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." Petitioner also attested by his signature "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." As of the date of his Gaston P.D. Form F-5A, Petitioner was certified as both a deputy and a detention officer with the Northampton County Sheriff's Office.

5. Also in support of his application for appointment and certification as a justice officer with the Gaston Police Department in or about 1998, Petitioner was required to fill out, sign, and submit a Form F-3 Personal History Statement. On the second page of the Form F-3 is a section headed "CRIMINAL OFFENSE RECORD AND DISCIPLINARY ACTIONS." The questions in this section are preceded by introductory language which reads in pertinent part as follows:

NOTE: Include all offenses other than minor traffic offenses. . . .

Answer all of the following questions completely and accurately. Any falsifications 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 or whether an offense remains on your record, you should answer "Yes." You should answer "No" **only** if you have never been arrested or charged, or your record was expunged by a judge's court order.

6. Question number 47 under the criminal offense section of the Form F-3 reads: "Have you ever been arrested by a law enforcement officer or otherwise charged with a criminal offense?" In his response to this question, Petitioner checked the box indicating his answer to be "No." This Form F-3 was signed by Petitioner on July 2, 1998, then re-signed by Petitioner and notarized on February 17, 2000. Petitioner's signature indicated his certification "that each and every statement made on this form is true and complete and I understand that any misstatement or omission of information will subject me to disqualification or dismissal."

7. In support of Petitioner's application for correctional officer certification in or around February 2003, he was required to fill out, sign, and submit a Form F-5A Report of Appointment/Application for Certification - DOC Correctional Officer. Under the section labeled "Criminal Conviction Record," Petitioner listed two convictions in response to question number 6: the 1988 simple assault conviction and the 1988 operating a motor boat without a fire extinguisher conviction. He omitted any reference to his Warren County conviction for fishing

without a license from the year 1985. The criminal conviction section was preceded by the instruction that “All convictions other than minor traffic violations must be reported below.”

8. Petitioner’s signature to his DOC F-5A, dated February 27, 2003, certified that every statement made on the form was “true and complete,” and acknowledged 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.”

9. At the hearing in this matter, Petitioner does not deny any of the foregoing omissions from his prior application and certification documents. Petitioner did not indicate having mentioned any of the omitted charges and/or convictions to the prospective employers (Gaston P.D. or DOC) at any time prior to the submission of his respective applications with these agencies. Petitioner testified that he did not have any experience nor guidance in answering the background questions and was admittedly somewhat careless with the answers.

10. Petitioner further testified that he did not intend for any of his responses to the forms to be incomplete or untruthful.

11. The forms associated with Petitioner’s application for employment and certification through Gaston Police Department requested criminal background information from Petitioner. He did not make any inquiry to Gaston P.D. regarding the charges or convictions in order to address any concerns about whether these should be disclosed. Petitioner testified that his failure to ask for guidance and his failure to make an inquiry was an honest mistake, not intended to deceive.

12. The Form F-5A Petitioner submitted for his application for employment and certification through DOC requested some criminal background information omitted by Petitioner. There was no testimony from Petitioner that he mentioned his fishing without a license conviction to any employee of DOC during the application process. The Petitioner testified that he had forgotten about the fishing without a license charge that took place in Warren County in 1985.

13. N. C. State Trooper William T. Smith testified for Petitioner. He has been assigned to the Northampton County area for approximately 15 years and has known Petitioner for many years. Trooper Smith stated that Petitioner was a diligent, hardworking individual who set an excellent example for all law enforcement personnel. He knew Petitioner to be a “straight shooter” who had done a great deal of good for the city of Gaston.

14. Thomas Staton testified for Petitioner. He met Petitioner in 1997 and it was Petitioner who inspired him to get into law enforcement. Officer Staton stated that Petitioner was a good man, known by all as an individual of high integrity who was always truthful.

15. Northampton County Sheriff Jack E. Smith testified on Petitioner’s behalf. Sheriff Smith has known Petitioner in his law enforcement capacity for some 10 years. Sheriff Smith testified that Petitioner was dedicated and very honest, and that he trusted Petitioner and his

opinions. Sheriff Smith stated he has spoken at one time or another to “just about everybody in the county” and could relay that Petitioner enjoys the high respect of all those in the community.

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

CONCLUSIONS OF LAW

1. The parties are properly before the Office of Administrative Hearings, and jurisdiction and venue are proper. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in the matter. To the extent that the Findings of Fact contain Conclusions or Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.

2. The Probable Cause Committee of Respondent Commission found probable cause to believe that Petitioner knowingly made a material misrepresentation of information required for certification or accreditation.

3. The threshold for the element of “knowingly” must be lower than the threshold for the violation of 12 NCAC 09A .0204(b)(7), which prohibits an applicant or certified officer from obtaining or attempting to obtain certification from the Commission “knowingly and willfully, by any means of false pretense, deception, defraudation, misrepresentation or cheating whatsoever.” The intention to deceive is not necessary to be proven for violations of 12 NCAC 09A .0204(b)(6), which is charged here.

4. Whether a Petitioner has engaged in knowingly making a material misrepresentation may be gathered from the facts of the case as applied to the standards of law that speak to the specific issues. Knowingly means with “knowledge; consciously; intelligently; willfully; intentionally” and is equivalent to “an averment that one knew what he was about to do, and, with such knowledge, proceeded to do the act alleged.” Black’s Law Dictionary 784 (5th ed. 1979). Material is “important; more or less necessary; having influence or effect.” It is representations (or lack of representations) relating to a matter “which is so substantial and important as to influence the party to whom made.” Black’s Law Dictionary 880 (5th ed. 1979). Misrepresentation is an incorrect or false representation. Black’s Law Dictionary 903 (5th ed. 1979).

5. Based on the facts and circumstances of this case as well as viewing the elements of both knowingly and material, and taking into account it is Respondent as the party carrying the burden of proof, suspension of Petitioner’s law enforcement certification “for not less than five years” would not be appropriate.

6. Pursuant to 12 NCAC 09A .0204(b)(6), the Commission may suspend or revoke the certification of a justice officer when the Commission finds the certified officer “has knowingly

made a material misrepresentation of any information required for certification.” The sanction for such a violation, if imposed, “shall be for a period of not less than five years” unless reduced or suspended following an administrative hearing. 12 NCAC 09A .0205(b). Alternatively, a period of probation may be imposed, instead. *Id.*

7. The authority to reduce or suspend any period of sanction may be utilized by the Commission when circumstances brought out at the administrative hearing warrant such. Based on the age of the offenses, Petitioner’s outstanding public service record, and the character witnesses presented at the hearing, this authority by the Commission should most definitely be utilized if the final decision should proceed to that point of deliberation.

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 sanctions should not be imposed against Petitioner. The Undersigned proposes that the Petitioner’s certification as a law enforcement officer not be suspended.

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 29th day of April, 2015.

Augustus B. Elkins II
Administrative Law Judge