

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14DOJ05502

<p>RACHAEL ELISABETH HOFFMAN PETITIONER,</p> <p>V.</p> <p>N C CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION RESPONDENT.</p>	<p>PROPOSAL FOR DECISION</p>
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This case came on for hearing on January 8, 2015 before Administrative Law Judge J. Randall May, in Charlotte, North Carolina. This case was heard after Respondent requested, pursuant to N.C.G.S. § 150B-40(e), 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.

APPEARANCES

Petitioner: Rachel Elisabeth Hoffman, *pro se*
8705 Creek Trail Lane Apt 525
Cornelius, North Carolina 28031

Respondent: William P. Hart, Jr.
Attorney for Respondent
Department of Justice
Law Enforcement Liaison Section
P.O. Box 629
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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?

PROPOSED FINDINGS OF FACT

1. Petitioner applied for certification as a law enforcement officer with the Charlotte Mecklenburg Police Department on February 28, 2013. She was previously certified as a full-time law enforcement officer with the Charlotte/Douglas International Airport Police Department. Petitioner was first awarded certification on June 25, 2008, and the Charlotte/Douglas International Airport Police Department merged with the Charlotte-Mecklenburg Police Department, giving rise to the Petitioner's application for certification that is in question.

2. In 2002 Petitioner was charged with Underage Possession of Alcohol (Volusia Co., FL No. CTC0234906MMAES) (guilty); and in 2003 Petitioner was charged with Possession of Fortified-Wine/Liquor/Mix Beverage less than 21 (Mecklenburg Co. No. 03 CR 53013) (deferred prosecution).

3. In her application for appointment and certification as a justice officer with the Charlotte/Douglas International Airport Police Department in or about 2008, 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 failed to list the following offenses: Underage Possession of Alcohol (Volusia Co., FL No. CTC0234906MMAES) (guilty); and Possession of Fortified-Wine/Liquor/Mix Beverage less than 21 (Mecklenburg Co. No. 03 CR 53013) (deferred prosecution).

4. Petitioner's signature on the Charlotte/Douglas International Airport P.D. Form F-5A, dated June 9, 2008, indicated, among other things, her 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 her 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 her Charlotte/Douglas International Airport P.D. Form F-5A, Petitioner had never previously been certified as a Law Enforcement Officer.

5. Also in support of her application for appointment and certification as a justice officer with the Charlotte/Douglas International Airport Police Department in or about 2008, 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 her response to this question, Petitioner checked the box indicating her answer to be “Yes.” However, Petitioner failed to list Underage Possession of Alcohol (Volusia Co., FL No. CTC0234906MMAES) (guilty). Petitioner did list Possession of Fortified-Wine/Liquor/Mix Beverage less than 21 (Mecklenburg Co. No. 03 CR 53013) (deferred prosecution). This Form F-3 was signed by Petitioner and notarized on April 2, 2008. Petitioner’s signature indicated her 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 her application for appointment and certification as a justice officer with the Charlotte-Mecklenburg Police Department in or about 2013, 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 failed to list the following offense: Underage Possession of Alcohol (Volusia Co., FL No. CTC0234906MMAES) (guilty).

8. Petitioner provided a notarized written statement regarding her omission of the following offense in 2008: Possession of Fortified-Wine/Liquor/Mix Beverage less than 21 (Mecklenburg Co. No. 03 CR 53013) (deferred prosecution). According to her statement and testimony, Petitioner likely misread the question on the F-5A form leading her to fail to disclose the charges. She disclosed the charge during her job interview and mistakenly omitted it from her F-5A. Her account was substantially corroborated by other testimony at the hearing, as well as the inclusion of the charge on her 2008 F-3 form. This omission is not found to be a knowing, material misrepresentation.

9. Petitioner also provided a notarized written statement regarding her omission of the following offense in both 2008 and 2013: Underage Possession of Alcohol (Volusia Co., FL No. CTC0234906MMAES) (guilty). According to her statement and testimony, Petitioner could not recall whether she had disclosed the charge on her F-3 and F-5A forms. She stated she may have made an error or oversight, and because she had disclosed the 2003 charge from Mecklenburg County on her 2013 forms, she was not being deceitful. The Florida underage possession charge was based upon an ordinance alleged to have been violated during Petitioner’s Spring break trip to that State. Petitioner was not required to appear in court to answer the charge but instead mailed her payment of the fine assessed to her.

10. At the hearing in this matter, Petitioner does not deny any of the foregoing omissions from her prior application and certification documents. Petitioner’s account is consistent with the notarized statements she provided, which tend to indicate inadvertence on her part.

11. Several other officers-both peers and superior officers-with the Charlotte-Mecklenburg P.D. testified on Petitioner's behalf at the hearing and spoke highly of her integrity and performance as an officer. At present, Petitioner consumes alcohol only on rare social occasions and does so in moderation.

12. The forms associated with Petitioner's application for employment and certification through Charlotte/Douglas International Airport P.D. and Charlotte-Mecklenburg P.D. were unequivocal in requesting criminal background information from Petitioner. She did not make any inquiry to either the Charlotte/Douglas International P.D. or the Charlotte-Mecklenburg P.D. regarding the 2002 charge in order to address any concerns about whether it should be disclosed. Petitioner failed to provide a plausible reason for omitting the charge originally. Moreover, Petitioner's contention that oversight led to her omission of the charge on both forms is not plausible given the firm and unambiguous language of both the F-5A and F-3 forms. Therefore, Petitioner's omission of her criminal charge of Underage Possession of Alcohol (Volusia Co., FL No. CTC0234906MMAES) (guilty) in association with her application for appointment and certification as a law enforcement officer with Charlotte/Douglas International Airport P.D. and Charlotte-Mecklenburg P.D. constitutes a knowing misrepresentation.

PROPOSED CONCLUSIONS OF LAW

1. The parties are properly before the Office of Administrative Hearings, and jurisdiction and venue are proper.

2. 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.

3. 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.*

4. 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.

5. Given the nature of the law enforcement provision and the fact that criminal charges and convictions are pertinent to the investigation of possible violations of other rules of the Commission, Petitioner's misrepresentations were material.

6. By a preponderance of the evidence, Petitioner violated 12 NCAC 09A .0204(b)(6) when she knowingly omitted criminal background information during her application for appointment and employment with the Charlotte/Douglas International Airport P.D. and the Charlotte Mecklenburg P.D. Therefore, her justice officer certification is subject to denial for a period of not less than five years. However, the Commission may consider whether the authorized sanction should be suspended or a period of probation imposed instead.

7. In order to fully understand and apply the foregoing, the petitioner's youth, lack of animus, years of good service and the testimony of her peers should be used to mitigate her possible sanctions.

Therefore, it is the recommendation of the undersigned that the Commission consider the following:

PROPOSAL FOR DECISION

Based on the foregoing Proposed Findings of Fact and Proposed Conclusions of Law, the undersigned recommends Petitioner's application for Law Enforcement Certification be granted subject to a one year period of probation. This is based on her relative youth at the time of the occurrences and the superlative recommendation of the witnesses.

NOTICE AND ORDER

The North Carolina Criminal Justice Education and Training Standards Commission is the agency that will make the Final Decision in this contested case. As the final decision-maker, 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).

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714.

IT IS SO ORDERED.

This the 11th day of March, 2015.

J. Randall May
Administrative Law Judge