

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14-DOJ-05503

RAYBURN DARRELL ROWE,)
)
 Petitioner,)
)
 v.)
)
 NORTH CAROLINA CRIMINAL)
 JUSTICE AND TRAINING)
 STANDARDS COMMISSION,)
)
 Respondent.)

PROPOSAL FOR DECISION

On January 26, 2015, Administrative Law Judge Melissa Owens Lassiter heard this contested case in Raleigh, North Carolina after Respondent requested, pursuant to N.C.G.S. § 150B-40(e), designation of an Administrative Law Judge to preside at a contested case hearing under Article 3A, Chapter 150B of the North Carolina General Statutes. On February 25, 2015, Respondent filed its proposed Proposal for Decision. On March 5, 2015, Petitioner filed its proposed Proposal for Decision.

APPEARANCES

Petitioner: J. Heydt Philbeck
Attorney for Petitioner
Bailey & Dixon, LLP
434 Fayetteville Street, Suite 2500
Raleigh, North Carolina 27601

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 a material misrepresentation of any information required for certification?
2. What sanction, if any, should Respondent impose against Petitioner's law enforcement officer certification?

STATUTES AND RULES AT ISSUE

N.C. Gen. Stat. § 17E-1 et. seq.
12 NCAC 09A .0204 & 12 NCAC 09A. 0205(b)(4)

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner: 1 – 11, 14

For Respondent: 1, 2

FINDINGS OF FACT

1. From 1982 until 1989, Petitioner was a commissioned officer in the North Carolina National Guard, while he also attended school at Campbell University. In 1989, Petitioner was honorably discharged from the National Guard. As a commissioned officer with the National Guard, Petitioner had purchased part of his equipment, and part of his equipment was issued by whichever service he served. After being honorably discharged, Petitioner turned in his equipment. (T. p. 8-9)

2. On October 16, 1989, Sheriffs Training and Standards Commission awarded Petitioner a certification to work as a full-time law enforcement officer with the Northampton County Sheriff’s Office. From 1989 until 1991, Petitioner worked as a Deputy Sheriff for the Northampton County Sheriff’s Office.

3. In 1990, Northampton County Sheriff Ellis Squire called Petitioner into his office, and informed Petitioner that he had a warrant for Petitioner from the National Guard. Petitioner was “to say the least, shocked.” (T. p. 10) Sheriff Squire served the warrant on Petitioner by handing the warrant to Petitioner. Petitioner was not handcuffed or taken into custody. Neither was Petitioner "arrested" for such charge. (T. p. 20)

4. Petitioner contacted the National Guard and spoke with Sergeant Edgar Lewis. Sgt. Lewis told Petitioner “it was a mistake and it shouldn’t have been done, to just turn in the equipment.” Lewis also told Petitioner that, “As soon as they got it, it would be dismissed, which it was.” (T. p. 10)

5. Petitioner never intended to take the property of the military to keep it for his personal use permanently. (T. p. 27) Petitioner kept the property by mistake and oversight. Petitioner returned the equipment to the National Guard in a bag. The equipment was inconsequential. He had never been contacted by the National Guard about the equipment before. (T. p.10)

6. Court records show that a “Conversion Of Military Property” charge was filed against Petitioner on January 26, 1990. On February 22, 1990, Petitioner met National Guard

Sergeant Lewis in court, and the charge was voluntarily dismissed. There is no date and arrest number or warrant number listed on the court records. (Resp. Ex. 4)

7. In 1991, the Murfreesboro Police Chief Ed Harris asked Petitioner to come work for him as a detective. On June 24, 1991, Petitioner applied for certification with Respondent to serve as a law enforcement officer with the Murfreesboro Police Department. As part of his application for appointment and certification with the Murfreesboro Police Department, Petitioner was required to complete, sign, and submit a Form F-5A Report of Appointment/Application for Certification—Law Enforcement Officer to Respondent. This document contains, *inter alia*, the following section:

SECTION FOR ALL APPLICANTS

CRIMINAL OFFENSE RECORD: Exclude minor traffic offense, unless they are charged at the same time you were charged with DWI, DUI, driving while under the influence of drugs, driving while license permanently revoked or suspended, or duty to stop in event of accident.

1. Offense Charged _____ Law Enforcement Agency _____
Date _____ Disposition of Case _____

(Resp. Exh. 2)

8. Petitioner completed the 1991 Form F-5A while sitting across the desk from Murfreesboro Police Chief Harris. Petitioner and Harris discussed the “Conversion Of Military Property” charge against Petitioner as follows:

Chief Harris advised me since it was a mistake – and I explained it to him just like I explained it to you. On his guidance, I did not put it down. And to be completely honest with you, since that date I’ve thought no more about it until this issue arose.

(T. pp. 10-16) More specifically, Chief Harris advised Petitioner that:

[I]t was a mistake as the Sergeant had said. He said it was not necessary to put it down. And at 23 years old and a year’s experience, I deferred to the chief because he’s the chief. So that’s what I did.

(T. p. 13) For the foregoing reason, Petitioner did not list the following offense: “Conversion of Military Property (Pasquotank Co. No. 90 CR 721) (voluntary dismissal)” under the “Criminal Offense Record” section on his 1991 Form F-5A. (Resp. Exh. 2. p. 5)

9. Petitioner’s signature on the June 24, 1991, Murfreesboro P.D. Form F-5A, indicated, among other things, his understanding and agreement that:

[A]ny 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.

(Resp. Exh. 2) Petitioner also attested by his signature:

[T]hat 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.

10. Petitioner worked as a Detective with Murfreesboro Police Department until Chief Harris passed away. From 1995 to 1997, Petitioner worked as a Police Sergeant for the Murfreesboro Police. From 1999 until August 31, 2005, Petitioner served as the Murfreesboro Chief of Police.

11. Recently, the new Northampton County Sheriff requested that Petitioner be sworn as a special Deputy Sheriff to assist the Sheriff, because the Sheriff prefers the Chiefs of Police in his county be sworn as deputies. (T. pp. 8-9)

12. Petitioner provided a notarized written statement to Respondent regarding his omission of the charge of "Conversion of Military Property" (Pasquotank Co. No. 90 CR 721) (voluntary dismissal) on his 1991 Form F-5A. (Resp. Ex. 2) In that statement, Petitioner thought the foregoing charge had been included with his paperwork, because he remembers speaking with the Chief of the Murfreesboro P.D. at the time regarding the incident. Petitioner explained that he had mistakenly kept some military equipment after being honorably discharged from the National Guard. Upon learning of the "Conversion of Military Property" charge, Petitioner immediately turned in the items and the charges were dismissed at the first court appearance.

13. On June 12, 2014, Respondent notified Petitioner that its Probable Cause Committee had found probable cause existed to suspend Petitioner's law enforcement certification, pursuant to 12 NCAC 09A .0204(b)(6), for knowingly making a material misrepresentation of information required for certification by failing to list the following charge on Petitioner's June 24, 1991 Report of Appointment/Application for Certification (Form F-5A) for Murfreesboro Police Department: "Conversion of Military Property (Pasquotank Co. -90CR 721/Voluntary Dismissal on February 22, 1990)."

14. At the administrative hearing in this matter, Petitioner acknowledged that he signed the Form F-5A in 1991, and failed to list the "Conversion of Military Property" charge from his application and certification documents. Petitioner's account is consistent with the notarized statement he provided to Respondent. Further, Petitioner explained that the National Guard Sergeant who charged him stated the charge was a mistake. In 1991, Petitioner relied upon the advice of Murfreesboro Police Chief Harris, who advised Petitioner not to include the charge on the form. "I was just following the advice of the chief, because it was dismissed." (T. p. 12)

15. The Form F-5A associated with Petitioner's application for employment and certification through the Murfreesboro P.D. was unequivocal in requesting criminal background

information from Petitioner. Even though Petitioner did not make a material misrepresentation to his prospective employer, his omission of the conversion charge on his Form F-5A did constitute a material misrepresentation to the Commission, albeit upon the advice of his hiring chief.

16. Petitioner enjoys the full and unequivocal support of many respected members and elected officials of his community. He has not been charged with any other criminal offense during his lifetime. He has not violated any other rule of the Commission or policy of his employer during a law enforcement career spanning in excess of twenty years.

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 9A .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.”

4. 12 NCAC 9A .0205 (b) states that the period of sanction, if imposed, for suspension of the certification of a criminal justice officer:

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: . . .

(4) material misrepresentation of any information required for certification or accreditation; or

Alternatively, a period of probation may be imposed. *Id.*

5. The threshold for the element of “knowingly” must be lower than the threshold for the violation of 12 NCAC 9A .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 9A .0204(b)(6), which is charged here.

6. 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 assertions that he omitted the above-referenced charge due to the instructions of Murfreesboro Police Chief Harris is credible in light of the preponderance of the evidence.

7. Petitioner made a material misrepresentation of fact on the Report of Appointment/Application for Certification (Form F-5A) he completed and signed on or about June 24, 1991, as part of his application for employment with the Murfreesboro Police Department, by failing to list the above-cited charge when he completed the criminal record section of that Form.

8. The Report of Appointment/Application for Certification (Form F-5A) Petitioner completed and signed on or about June 24, 1991, as part of his application with the Murfreesboro Police Department, were necessary and required parts of the application process to become a certified law enforcement officer.

9. Although the responsibility for completing the application ultimately rests with the Petitioner, Petitioner did not knowingly make material misrepresentations or omissions on his June 24, 1991 Form F-5A form as he relied on the expertise and advice of Chief Harris, the chief of the Murfreesboro Police Department, in completing his Form F-5A, and he gave all pertinent and required information to the Chief.

10. Petitioner has not been charged with any other criminal offense during his lifetime, and has not violated any other rule of the Commission or policy of his employer during a law enforcement career of more than sixteen years.

PROPOSAL FOR DECISION

NOW, THEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned recommends that Respondent **GRANT** Petitioner's law enforcement officer commission with a probationary status of one year.

NOTICE

The North Carolina Criminal Justice Education and Training Standards Commission will make the Final Decision in this case. 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. N.C.G.S. § 150B-40(e).

This 20th day of April, 2015

Melissa Owens Lassiter
Administrative Law Judge