

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14 DOJ 05714

Petitioner,

PROPOSAL FOR DECISION

Respondent.

APPEARANCES

ISSUE

FINDINGS OF FACT

2. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter referred to as "The Sheriffs' Commission") has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify justice officers and to deny, revoke, or suspend such certification.

3. 12 NCAC 10B .0301(a)(6)(c) provides that every Justice Officer employed or certified in North Carolina shall have produced a negative result on a drug screen administered according to the following specifications:

The drugs whose use shall be tested for shall include at least cannabis, cocaine, phencyclidine (PCP), opiates and amphetamines or their metabolites.

4. Further, 12 NCAC 10B .0204(b)(5) provides that the Commission shall revoke, deny, or suspend a law enforcement officer's certification when the Commission finds that the applicant for certification or certified officer has produced a positive result on any drug screen reported to the Respondent Commission, or reported to any other commission, agency, or board established to certify a person as a justice officer, corrections officer, or criminal justice officer, unless the positive result is due to a medically indicated cause.

5. Pursuant to 12 NCAC 10B .0205, when Respondent suspends or denies the certification of a justice officer for a positive drug screen, the period of sanction shall be not less than five years; however, Respondent may either reduce or suspend the period of sanction under Paragraph 2 (g) of this Rule, or substitute a period of probation in lieu of suspension of certification following an administrative hearing, where extenuating circumstances brought out at the administrative hearing warrant such a reduction or suspension.

6. Petitioner is currently an applicant for certification through the Durham County Sheriff's Office.

7. Petitioner was previously employed at the Durham County Sheriff's Office for approximately 10 years, from July 2002 until August of 2012. Petitioner left the Durham County Sheriff's Office in order to advance his career and pursue employment as a sworn criminal justice officer with the Duke University Police Department.

8. On August 7, 2012, Petitioner was notified in writing of his conditional offer for employment at the Duke University Police Department. Respondent's Exhibit 3. Among other things, Petitioner's conditional offer was contingent on Petitioner providing a negative drug screen.

9. On August 16, 2012, Petitioner submitted to a pre-employment drug screen through Duke University and Health Systems. On August 21, 2012, Petitioner's drug screen reported back positive for the controlled substance Codeine, which is an opiate. Respondent's Exhibit 4.

10. Petitioner did not have a prescription for Codeine at the time he tested positive for this controlled substance. Petitioner obtained the Codeine from his fiancée, Erin Metz, who had been prescribed the medication. Respondent's Exhibit 5.

11. On August 31, 2012, Duke University Police Department withdrew Petitioner's conditional offer of employment. Respondent's Exhibit 7.

12. At the administrative hearing, Petitioner admitted that he lost the job opportunity at the Duke University Police Department, because he tested positive for Codeine, a controlled substance, on or about August 16, 2012. He explained that in 2012, he experienced neck and back pain due to a weightlifting injury he received earlier in 2012. Although Petitioner was experiencing neck pain periodically, he had not reached the point where he felt he needed medical intervention.

13. Petitioner's neck pain progressively worsened during the months leading up to August 2012. On August 15, 2012, Petitioner was experiencing neck pain. He believed he aggravated his neck from a workout the previous day. Petitioner took Motrin for his neck pain, but that did not alleviate the pain. Petitioner was desperate for pain relief. After Petitioner's fiancée' (now wife) observed Petitioner's intense pain, she suggested Petitioner take one of her prescription Tylenol 3 medication, which contained Codeine. Before going to bed, Petitioner took his fiancé's prescription Tylenol 3 to alleviate his neck pain, and to help him sleep. When Petitioner took this medication, he did not possess a valid prescription for the drug.

15. Petitioner's use of a drug without a valid prescription was limited to his one-time use of Tylenol 3 on August 15, 2012. Petitioner admits that what he did was wrong, and that it was unlawful for him to take a prescription medication that had been prescribed to another person. Petitioner regrets having taken the Tylenol 3 that was prescribed to his fiancé.

16. Petitioner's certification is subject to denial pursuant to 12 NCAC 10B .0204 (b)(5) based on Petitioner having produced a positive drug screen through the Criminal Justice Education and Training Standards Commission on or about August 16, 2012. Petitioner's positive drug screen was not the result of a medically indicated cause as Petitioner had not consulted with a physician, and had not been prescribed Codeine before August 16, 2012.

17. Pursuant to 12 N.C.A.C. 10B .0205 (2)(g), Respondent has the discretion to issue a lesser sanction than denial of Petitioner's application for certification where extenuating circumstances brought out at the administrative hearing warrant such a reduction or suspension.

18. The substantial record in this case established that Petitioner was suffering from a significant medical condition in his neck when he used the Tylenol 3 that had been prescribed to his fiancé on August 15, 2012. On December 20, 2012, Petitioner underwent an MRI to diagnose his neck pain. The radiologist, Dr. Hetal P. Patel, noted Petitioner suffered from a broad-based bulging disc between C6-C7 of Petitioner's cervical spine. See Petitioner's Exhibit 1. The bulging disc was noted as having an effect upon Petitioner's right intraspinal nerve root.

19. On February 10, 2013, Dr. Jennifer Orning of UNC-Hospitals performed an anterior discectomy, and anterior arthrodesis of C6 and C7 of Petitioner's cervical spine. In addition, Dr. Orning also placed an Atlantis plate at C6-C7 and performed a Cornerstone structural allograft. Petitioner's Exhibit 1.

20. When Petitioner took the Tylenol 3, prescribed to his fiancé, on August 15, 2012, he suffered a significant spinal condition that was untreated.

21. Petitioner has the support of the law enforcement community, as evidenced by several letters of support that were introduced at the administrative hearing. Several law enforcement officers opined at hearing that Petitioner was a professional, trustworthy, and hardworking deputy while at the Durham County Sheriff's Office, and that Petitioner was a good company police officer. The following officers support Petitioner obtaining certification through Respondent Commission: Durham County Sheriff's Sgt. Eric Carpenter; Durham County Sheriff's Sgt. David Q LaBarre; Durham County Sheriff's Deputy Justin Gryder; Old Dominion Public Security Officers Kevin Brant who supervised Petitioner as a company police officer at Alamance Regional Medical Center, and Officer Joshua Burnette who worked with Petitioner at Alamance Regional; and Nate Chambers from the Chapel Hill Police Department.

CONCLUSIONS OF LAW

1. The parties are properly before the Office of Administrative Hearings who has subject matter jurisdiction over the matter of this case, and personal jurisdiction.

2. 12 N.C.A.C. 10B .0301(6)(c) requires every justice officer employed in North Carolina to produce negative drug screen results. Drugs whose use shall be tested for include Opiates or their metabolites. The prescription drug Codeine is classified as an opiate.

3. 12 N.C.A.C. 10B .0204(b)(5) provides that the Sheriffs' Education and Training Standards Commission shall revoke, deny, or suspend certification when the Commission finds that the applicant or certified officer has produced a positive drug screen reported to the Respondent Commission or to any other commission, agency, or board established to certify a person as a justice officer.

4. In this case, Petitioner tested positive for Codeine on or about August 16, 2012. Petitioner did not possess a valid prescription for this controlled substance when he took his fiancé's prescription Tylenol 3 containing Codeine for excruciating neck pain. Petitioner's conduct was unlawful insofar as Petitioner took medication that had been prescribed to his fiancé. Petitioner is not in compliance with rule 12 N.C.A.C. 10B .0301(6)(c) and 12 N.C.A.C. 10B .0204(b)(5), and Petitioner's application for certification is therefore subject to denial.

5. Pursuant to 12 N.C.A.C. 10B .0205(2)(g), when Respondent denies the certification of a justice officer for a positive drug screen result, the period of sanction shall be not less than five (5) years.

6. However, pursuant to 12 N.C.A.C. 10B .0205(2)(g), Respondent may either reduce or suspend the period of sanction under this rule, or substitute a period of probation in lieu of revocation or denial of certification, following an administrative hearing, where extenuating circumstances brought out at the administrative hearing warrant such a reduction.

7. The extenuating circumstances brought out at the administrative hearing warrant the issuance of Petitioner's certification. Petitioner's use of the Tylenol 3 that had been prescribed to his fiancé was limited to one-time use on the evening of August 15, 2012. At that

time, Petitioner was suffering from a significant spinal condition that ultimately resulted in Petitioner having a discectomy and placement of a plate to secure Petitioner's cervical spine. Petitioner has admitted that his actions were unlawful, and he regrets having taken the medication. There is no indication that Petitioner will engage in such behavior in the future. Based on these circumstances, the undersigned recommends that Petitioner be certified through the Respondent Commission.

PROPOSAL FOR DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned recommends Respondent issue Petitioner's justice officer's certification based on the extenuating circumstances brought out at the administrative hearing.

NOTICE

The North Carolina Sheriffs' Education and Training Standards Commission 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.

This 21st day of January, 2015.

Melissa Owens Lassiter
Administrative Law Judge