

STATE OF NORTH CAROLINA

COUNTY OF ROBESON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14 DOJ 06838

DARRYL BERRY,)
Petitioner,)

v.)

NORTH CAROLINA CRIMINAL)
JUSTICE)
EDUCATION AND TRAINING)
STANDARDS COMMISSION,)
Respondent.)

PROPOSAL FOR DECISION

On January 14, 2015 Administrative Law Judge Melissa Owens Lassiter heard this case in Fayetteville, 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 March 2, 2015, pursuant to the undersigned’s request, Respondent filed a proposed Proposal for Decision with the Office of Administrative Hearings.

APPEARANCES

Petitioner: Darryl Berry
1634 Canal Road
Pembroke, North Carolina 28372

Respondent: Lauren Tally Earnhardt
Attorney for Respondent
Department of Justice
Law Enforcement Liaison Section
9001 Mail Service Center
Raleigh, North Carolina 27699-9001

ISSUE

Does substantial evidence exist to deny Petitioner’s application for certification as a law enforcement officer?

STATUTES AND RULES AT ISSUE

N.C. Gen. Stat. § 17C-6 and 17C-10
12 NCAC 09B.0401, 12 NCAC 09B.0402, 12 NCAC 09B.0403, 12 NCAC 09B. 0405

FINDINGS OF FACT

1. Both parties are properly before the undersigned Administrative Law Judge, in that jurisdiction and venue are proper and both parties received a Notice of Hearing.

2. The North Carolina Criminal Justice Education and Training Standards Commission (“Respondent”) has the authority granted under Chapter 17C of the North Carolina General Statutes, and Title 12 of the North Carolina Administrative Code, Chapter 9A, to certify law enforcement officers and to revoke, suspend or deny such certifications.

3. On March 30, 2013, Petitioner completed Basic Law Enforcement Training at Bladen Community College. He passed the state exam on April 5, 2013. (Respondent’s Exhibit 1)

4. 12 NCAC 09B .0401 states:

(c) If a trainee completes the basic training course prior to being employed as a law enforcement officer, the trainee shall be duly appointed and sworn as a law enforcement officer within one year of successfully passing the comprehensive written exam as specified in Rule .0406 of this Section for that basic training course to be recognized under these Rules.

5. Petitioner knew that under Respondent’s Administrative Code, he had one year from his successfully passing his written exam to become duly appointed and sworn as a law enforcement officer.

6. On March 28, 2014, Petitioner talked with Red Springs Police Chief Ronnie Patterson, and Capt. Kevin Locklear regarding employment with that agency. Patterson and Locklear agreed to help Petitioner. On March 28, 2014, Capt. Locklear called and sent a written letter to Respondent requesting an extension for Red Springs PD to complete Petitioner’s application paperwork. Respondent received Locklear’s letter that day. (Respondent’s Exhibit 2)

7. On April 1, 2014, Respondent sent an email to Red Springs Police Chief Patterson, and copied Captain Kevin Locklear, acknowledging receipt of Red Springs PD’s request for an extension for Petitioner. Respondent granted the requested extension until May 5, 2014. The last sentence of the email stated:

Please note that this date is time sensitive and I trust your office will proceed to have this applicant’s paperwork submitted within the allotted time frame.

(Respondent's Exhibit 3) During that extension, Petitioner received the required physical, drug screening, and psychiatric evaluation.

8. On May 4, 2014, Petitioner successfully completed the required firearms training for certification. The firearms qualification form, Form F-9A, required the firearm instructor to print his name, instructor number, and initial each qualifying firearms round. On Petitioner's Form F-9A, the firearms instructor printed his name and instructor number for the first round. However, the instructor signed his name, but did not print his name and instructor number, on the line for the second qualifying firearms round. (Respondent's Exhibit 4)

9. On May 5, 2014, Respondent received a Form F-5A Request for Appointment and a Form F-9A Firearms Qualification Record from Red Springs PD on Petitioner's behalf. (Respondent's Exhibit 4)

10. Respondent's Deputy Director Richard Squires reviewed Petitioner's documentation. On May 6, 2014, Respondent's staff emailed Red Springs PD Chief Patterson and Captain Locklear and acknowledged receipt of the documents, and informed Red Springs PD that:

We received the application for Law Enforcement Certification [for Darryl Berry] and need the following: 1. F-9A: the firearm instructor needs to provide their signature and instructor number for each qualification score (both day and night) on the back page of the form. Please email, fax or mail the amended complete F-9A form.

(Respondent's Exhibit 5)

11. On June 12, 2014, when Respondent had not received any other email correspondence from Red Spring PD regarding Petitioner's certification, Respondent's staff, Jason Sauber, notified Chief Patterson and Captain Locklear at Red Spring PD, by email, that:

This email is to inform you that we are closing out the Law Enforcement Certification application in reference to the above named individual due [to] having not received the required documentation to complete the application process within 30 days. Should your agency wish to pursue certification for this individual, a new complete application and updated requirements will need to be submitted to our office.

(Respondent's Exhibit 6)

12. No one from Red Springs PD replied to Respondent's emails. Capt. Locklear, the person responsible for handling Petitioner's certification paperwork at Red Springs PD, was on vacation for several weeks.

13. On August 14, 2014, Respondent received an amended packet including a corrected Form F-9A and Form F-5A for Petitioner's certification from Red Springs PD Capt. Locklear.

Deputy Director Squires noted that Respondent received the amended certification paperwork for Petitioner outside of the one-year requirement, and 30-day extension granted by Respondent.

14. Deputy Director Squires reviewed Respondent's file for Petitioner, and did not see any emails regarding Petitioner's certification, between Red Springs PD and Respondent, before August 14, 2014. Neither was Squires aware of any discussion between Respondent and Red Springs PD about Petitioner's certification between May 2014 and August 2014.

15. On September 4, 2014, Respondent's staff, Mr. Sauber, emailed Chief Patterson and Captain Locklear at Red Springs PD that:

Our office has closed out the Law Enforcement Certification application on Mr. Berry. In order to apply for Certification we will need a full completed application and Mr. Berry completing BLET within the required minimum training standards."

(Respondent's Exhibit 7)

16. On September 10, 2014, Petitioner filed a petition for a contested case hearing appealing Respondent's decision to close his law enforcement certification application, and require Petitioner to complete another application, including completing another BLET program. In explaining the grounds for his appeal, Petitioner alleged:

. . . I graduated in April 2013 from BLET. I applied to numerous departments and drove hours for interviews. I ask [sic] numerous departments to help me get on Auxillary [sic] PD, most had no openings. The one I had interviews with[,] the other applicants got the job. So I had a week to go before my years [sic] was up, and Red Springs PD agreed to help me get on Auxillary [sic] . . . I got an extension [sic] for a month to get everything [sic] turned in. On the last day, [I] got everything turned in. NC Training and Standards had an issue with the way the firearms instructor signed my night [firearms] quilityfication [sic]. So Training and Standards emailed Red Springs PD and the Captain who takes care of all the departments hiring [sic] officer was on vacation. He got married and was out of the country and did not see the email untill [sic] he got back to work 3 weeks later. So he contacted Training and Standards and they told him was too late. I called them numerous times as well. Would not help me. I don't feel it was fair to lose my certification over someone else [sic] mistake over something as petty as a sinature [sic]. I worked so hard to go through BLET. I don't think it's fair to me to lose my certification over someone else mistake.

17. At the administrative hearing, Petitioner called no witnesses, and presented no exhibits. No representative from Red Springs PD testified on Petitioner's behalf.

18. Although the responsibility for the firearms certification application ultimately rests with Petitioner, Petitioner gave all pertinent and required information to Red Springs Police Chief Patterson and Captain Locklear, and relied upon them to submit his certification application documentation to Respondent.

19. There is no formal administrative rule in the North Carolina Administrative Code defining how Respondent will “notify” an applicant when the applicant’s certification paperwork is deficient, contains errors, or needs to be corrected.

20. Respondent’s practice is to notify only the sponsoring or employing agency, not the applicant, of any deficiencies in the required paperwork for certification, and request amended forms from that agency. (Squires’ testimony)

21. No one from Respondent ever contacted Petitioner regarding the error on Petitioner’s Form F-9A, firearm qualification form, but just notified the Red Springs Police Department as Petitioner’s sponsoring agency.

22. As Petitioner’s sponsoring agency, Red Springs Police Department failed to submit Petitioner’s corrected firearms certification paperwork to Respondent within the one year and 30 day deadline.

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 party with the burden of proof in a contested case must establish the facts required by N.C.G.S. §150B-23(a) by a preponderance of the evidence.

3. 12 NCAC 09B.0401 “Time Requirement for Completion of Training” provides that:

(a) Each criminal justice officer, with the exception of law enforcement officers, holding probationary certification shall complete, with passing scores, a Commission-accredited basic training course that includes training in the skills and knowledge necessary to perform the duties of his or her office. The officer shall complete the course within one year from the date of his original appointment, as determined by the date of the probationary certification.

(b) Each law enforcement officer, except wildlife enforcement officers, shall have completed with passing scores the accredited basic training course as prescribed in Rule .0205 of this Subchapter prior to obtaining probationary certification.

...

(d) If a trainee completes the basic training course prior to being employed as a law enforcement officer, the trainee **shall be duly appointed and sworn as a law enforcement officer within one year of successfully passing the comprehensive**

written exam as specified in Rule .0406 of this Section for that basic training course to be recognized under these Rules. (Emphasis added)

4. 12 NCAC 09B .0402 “Waiver of Completion of Training” provides:

(a) The Commission may waive an officer's completion of the commission-accredited training course upon receiving documentary evidence from the employing department that the officer has satisfactorily completed equivalent training. All such officers, however, shall serve a one-year period of probation.

5. 12 NCAC 09B.0403 “Evaluation for Training Waiver” provides the Commission staff parameters for evaluating requests for Training Waivers. The Rule provides:

(a) The Standards Division staff shall evaluate each law enforcement officer's training and experience to determine if equivalent training has been completed as specified in Rule .0402(a) of this Section. Applicants for certification with prior law enforcement experience shall have been employed in a full-time, sworn law enforcement position in order to be considered for training evaluation under this Rule. Applicants for certification with a combination of full-time and part-time experience shall be evaluated on the basis of the full-time experience only. The following criteria shall be used by Standards Division staff in evaluating a law enforcement officer's training and experience to determine eligibility for a waiver of training requirements:

(1) Persons having completed a Commission-accredited basic training program and not having been duly appointed and sworn as a law enforcement officer within one year of completion of the program shall complete a subsequent Commission-accredited basic training program, as prescribed in Rule .0405(a) of this Section, and achieve a passing score on the State Comprehensive Examination prior to obtaining probationary law enforcement certification, unless the Director determines that a delay in applying for certification was not due to neglect on the part of the applicant, in which case the Director may accept a Commission-accredited basic training program that is over one year old. The extension of the one-year period shall not exceed 30 days from the first year anniversary of the passing of the state comprehensive examination.

6. Petitioner has the burden of proving that Respondent lacked substantial evidence to deny his application for law enforcement officer certification.

7. The preponderance of the evidence in this case established that under Respondent's administrative rules, Petitioner and Red Springs Police Department had one year and 30 days to complete the required application for certification and additional paperwork for Petitioner. However, Red Springs Police Department, as Petitioner's sponsoring agency, failed to submit the corrected firearms certification documentation to Respondent within the one year and 30 day deadline. Red Springs Police Department's failure to respond to Respondent's May 6, 2014 and

June 12, 2014 emails, by submitting Petitioner's corrected firearms certification documents to Respondent, within that deadline, indicated to Respondent that Red Springs PD had abandoned its request to certify Petitioner with their agency.

8. Petitioner failed to show by a preponderance of the evidence that Respondent's proposed denial of Petitioner's law enforcement officer certification is not supported by substantial evidence.

9. Nonetheless, there is no formal administrative rule in the North Carolina Administrative Code or formal policy defining how Respondent will "notify" an applicant when the applicant's certification paperwork is deficient, contains errors, or needs to be corrected.

10. Respondent's practice is to notify only the sponsoring or employing agency, not the applicant, of any deficiencies in the required paperwork for certification, and request amended forms from that agency. (Squires' testimony) The undisputed evidence in this case was that no one from Respondent ever contacted Petitioner regarding the error on Petitioner's Form F-9A, firearm qualification form, but just notified the Red Springs Police Department as Petitioner's sponsoring agency.

11. Although Petitioner is ultimately responsible for complying with the deadlines to submit his certification paperwork to Respondent, Petitioner gave all pertinent and required certification paperwork to Red Springs Police Chief Patterson and Captain Locklear, and relied upon Red Springs PD to submit his application for firearms certification to Respondent in a timely manner.

12. Given that Respondent failed to notify Petitioner that his certification paperwork was deficient, and needed to be corrected and resubmitted to Respondent by June 6, 2014, and given the facts of this case, the undersigned proposes that Respondent exercise its discretion under 12 NCAC 09B .0402 and 12 NCAC 09B. 0403 in determining whether to issue Petitioner's law enforcement certification.

PROPOSAL FOR DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby proposes that Respondent exercise its discretion under 12 NCAC 09B .0402 and .0403 in determining whether to issue Petitioner's law enforcement certification, or require Petitioner to attend another Basic Law Enforcement Training in its entirety, as required under 12 NCAC 09B.0403(a)(1), before being appointed and sworn as a law enforcement officer.

NOTICE

The North Carolina Criminal Justice Education and Training Standards Commission will make the Final Decision in this contested 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 1st day of April, 2015.

Melissa Owens Lassiter
Administrative Law Judge