

STATE OF NORTH CAROLINA
COUNTY OF GASTON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14DOJ08348

Brandon Tyler Josey Petitioner, v. N C Sheriffs' Education And Training Standards Commission Respondent.	PROPOSAL FOR DECISION
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THIS MATTER came on for hearing before Hon. J. Randolph Ward on April 8, 2015, in Morganton, North Carolina, upon Respondent's request, pursuant to N.C. Gen. Stat. § 150B-40(e), for designation of an Administrative Law Judge to preside at the hearing of this contested case under Article 3A, Chapter 150B of the North Carolina General Statutes.

APPEARANCES

Petitioner: *Pro se*

Respondent: Matthew L. Boyatt, Assistant Attorney General
N.C. Department of Justice
Raleigh, North Carolina

ISSUE

Does Petitioner possess the good moral character required of a sworn justice officer, as defined by 12 NCAC 10B .0301(a)(8)?

RULES AT ISSUE

12 NCAC 10B .0204(b)(2), 12 NCAC 10B .0204(d)(2), 12 NCAC 10B .0204(g), 12 NCAC 10B .0205(3), and 12 NCAC 10B .0301(a)(8).

WITNESSES

For Petitioner: Sgt. Brandon Tyler Josey, N.C. National Guard, Petitioner

For Respondent: Sgt. Spencer Cline, Newton Police Department
Sgt. Thad Scronce, Catawba Co. Sheriff's Office

EXHIBITS ADMITTED INTO EVIDENCE

Respondent's Exhibits ("R. Exs.") 1, 2, 3, 4, 5, 7 and 8 were admitted into evidence. The Parties did not move for admission of R. Ex. 6.

Notes of interviews with "friends of [Petitioner's] wife" who did not appear as witnesses subject to cross-examination and were offered to put into the record statements made under circumstances indicating a lack of trustworthiness -- i.e., having their origin in their ultimate source's period of marital strife -- were excluded from evidence pursuant to the hearsay rule. N.C. Gen. Stat. § 8C-1, Rules 802 & 803(8). "Public records and reports that are not admissible under section (8) are not admissible as business records exception (6)." Rule 803(8), Official Commentary.

UPON DUE CONSIDERATION of the arguments of counsel; the exhibits admitted; the sworn testimony of each of the witnesses in light of their opportunity to see, hear, know, and recall relevant facts and occurrences, any interests the witnesses may have, and whether their testimony is reasonable and consistent with other credible evidence; and upon assessing the greater weight of the evidence from the record as a whole in accordance with the applicable law, the undersigned Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter referred to as the "Commission" or "Respondent") 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 certifications for cause.
2. Petitioner is a combat veteran of the Iraq War, honorably discharged in April 2010 after four years' service. He led an eight-man squad in battle and was wounded in action. The U.S. Army awarded him the Army Achievement Medal, the Army Commendation Medal with Valor Device, a Purple Heart, and a Good Conduct Medal. Following the events discussed below, he accepted fulltime duty with the N.C. National Guard and currently holds a security clearance that allows him to be entrusted with \$2 million of "equipment and sensitive items." As of the date of the hearing, Petitioner was 28 years old, married, and the father of a 5 year old son. His conviction record consisted of three speeding tickets and a littering citation.
3. Petitioner creditably testified that he had a difficult post-war transition back to civilian life, complicated by post-traumatic stress disorder, for which he received therapy and medication. His transition was further complicated by the inability to obtain employment with remuneration adequate to support his young family. His application listed \$81,300 in debt. He described himself as estranged from his wife in 2013, though they still lived in the same home. He was remorseful about that situation, his online flirtations with other women, and untruthful or misleading statements made in the course of applying for

positions with the Newton Police Department and the Catawba County Sheriff's Office. Since those episodes, he has become "symptom-free" of his PTSD condition. He described his current marital situation as being markedly improved, though imperfect, and of having "reformed myself." He gave the general impression of being back on course in his new full-time duties with the N.C. National Guard and thinking about his future.

4. Petitioner applied for a police officer position with the Newton Police Department following his completion of Basic Law Enforcement Training at Catawba County Community College in February 2013. Sgt. Spencer Cline, who carried out the background investigation of Petitioner for the Newton Police Department, reported that "[t]he majority of the individuals contacted provided positive feedback about Mr. Josey," and that his "peers and instructors in BLET" described him "as being top-notch, squared away and trustworthy." However, another officer in the Department, Investigator Hill, whose wife was a coworker of Petitioner's wife, told Sgt. Cline about her accounts of strife in the Joseys' marriage and speculation among her friends that he had cheated on his wife with multiple women.
5. Sgt. Cline found that Petitioner had a page on a social website, tagged.com, on which he had been "friended" by about dozen young women. He contacted one of them, who allowed him to take photos and messages she had exchanged with Petitioner from her smart phone. In light of the other information he was receiving, Sgt. Cline concluded that they had had an extramarital affair, but she denied that. A texting exchange between them, which Sgt. Cline felt was incriminating, reveals that Petitioner told her he was married. Petitioner denied having a physical relationship with her or any of the other women he "met" online.
6. When Sgt. Cline and Investigator Hill confronted Petitioner, he initially falsely denied having the tagged.com webpage and knowing the woman who had cooperated with Sgt. Cline. Petitioner testified that he was untruthful because he was surprised and flustered by the questions, badly needed the job because of his financial situation, and was still suffering from PTSD, a condition that is notorious for making sufferers emotionally labile. His interviewers concluded that Petitioner told "several lies" and recommended against his employment.
7. In March 2013, Petitioner applied for a Deputy Sheriff position at the Catawba County Sheriff's office. His application disclosed that he had been rejected at the Newton Police Department because he "didn't pass the background [check]." Sgt. Thad Scronce, who was screening Petitioner for the Catawba Sheriff, contacted the Newton police and was told that Petitioner was denied employment because of untruthful statements he provided during the interview process.
8. When Sgt. Scronce interviewed him on March 6, 2013, Petitioner was generally forthcoming, including confessing to a theft when he was eight years old and, more recently, accidentally running a red light. However, Sgt. Scronce testified that Petitioner tried to mislead him about the reasons the Newton Police Department declined his application by suggesting it was the result of a personal matter with Investigator Hill,

relating to statements he had made about Petitioner's wife. Due to the "integrity issues" Sgt. Scronce identified in the interviews for both jobs, he recommended against hiring Petitioner to work for the Catawba County Sheriff's Office.

9. Petitioner subsequently applied to Respondent for Justice Officer Certification to work with the Alexander County Sheriff's Office in a sworn capacity. Petitioner received Respondent's *Notification of Probable Cause to Deny Justice Officer Certification*, dated September 12, 2014, and made a timely request for a contested case hearing. The stated grounds for the proposed denial were the untruthful statements in the two employment interviews referenced above.
10. The preponderance of the evidence, including the Petitioner's admissions, shows that he made false or misleading statements during his interviews for law enforcement positions with the Newton Police Department and the Catawba County Sheriff's Office.
11. The preponderance of the competent and credible evidence of record shows that Petitioner was not untruthful when he denied having physical extramarital relations during his employment interviews with the Newton Police Department and the Catawba County Sheriff's Office.
12. Petitioner testified at hearing that he had accepted a full-time position with the N.C. National Guard and could not also serve as a sworn peace officer while in that capacity, but that it remained his ambition to serve as a law enforcement officer following his service in the Guard, and thus he had appealed the denial of certification to address the questions about his character.
13. The evidence shows, as extenuating circumstances, that Petitioner's poor behavior while burdened with post-traumatic stress disorder, which required extensive treatment, and his marital difficulties caused or exacerbated by that condition, sharply contrasts with his honorable and meritorious wartime service in the Armed Forces, the reputation he had previously established in his community, and his well-regarded performance in Basic Law Enforcement Training.
14. To the extent that portions of the following Conclusions of Law include findings of fact, such are incorporated by reference into these Findings of Fact.

Upon the foregoing Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. To the extent that portions of the foregoing Findings of Fact include Conclusions of Law, such are incorporated by reference into these Conclusions of Law.
2. The parties and the subject matter of this hearing are properly before the Office of Administrative Hearings. N.C. Gen. Stat. §150B-40(e).

3. Pursuant to 12 NCAC 10B .0204(d)(2), the Commission may deny justice officer certification when the Commission finds that the applicant “fails to meet or maintain any of the employment or certification standards required by 12 NCAC 10B .0300.”
4. N.C. Administrative Code, Title 12, Chapter 10B .0301 requires:
 - (a) Every Justice Officer employed or certified in North Carolina shall: * * * (8) be of good moral character as defined in: *In re Willis*, 288 N.C. 1, 215 S.E.2d 771 (1975), *appeal dismissed* 423 U.S. 976 (1975); *State v. Harris*, 216 N.C. 746, 6 S.E.2d 854 (1940); *In re Legg*, 325 N.C. 658, 386 S.E.2d 174 (1989); *In re Applicants for License*, 143 N.C. 1, 55 S.E. 635 (1906); *In re Dillingham*, 188 N.C. 162, 124 S.E. 130 (1924); *State v. Benbow*, 309 N.C. 538, 308 S.E.2d 647 (1983); and their progeny[.]

“Good moral character has many attributes, but none are more important than honesty and candor. *** Whether a person is of good moral character is seldom subject to proof by reference to one or two incidents.” *In re Legg*, 325 N.C. 658, 386 S.E.2d 174 (1989).
5. Willfully making untruthful statements during two interviews for law enforcement officer positions portrays a lack of the good moral character required for certification as a law enforcement officer.
6. When “the Commission does ... deny the certification of a justice officer pursuant to [12 NCAC 10B .0204], the period of such sanction shall be as set out in 12 NCAC 10B .0205,” i.e., “(3) for an indefinite period, but continuing so long as the stated deficiency... continues to exist, where the cause of sanction is: (b) failure to meet or maintain the minimum standards of employment or certification[.]” However, “The Commission may ... substitute a period of probation in lieu of ... denial following an administrative hearing. This authority to reduce or suspend the period of sanction may be utilized by the Commission when extenuating circumstances brought out at the administrative hearing warrant such a reduction or suspension.”
7. “[W]hen one seeks to establish restoration of a character which has been deservedly forfeited, the question becomes essentially one of time and growth.” *In re Dillingham*, 188 N.C. 162, 124 S.E. 130 (1924).

Upon the foregoing Findings of Fact and Conclusions of Law, the undersigned makes the following:

PROPOSAL FOR DECISION

The undersigned respectfully recommends that the Commission deny Petitioner’s right to apply for Law Enforcement Officer Certification for a period of three (3) to five (5) years from his misrepresentations in March 2013.

NOTICE AND ORDER

The North Carolina Sheriffs' 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 hereby is 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 the 5th day of August, 2015.

J. Randolph Ward
Administrative Law Judge