

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DOJ 01540

<p>Lisa Mae Parsons Petitioner,</p> <p>v.</p> <p>N C Sheriffs' Education And Training Standards Commission Respondent.</p>	<p style="text-align: center;">PROPOSAL FOR DECISION</p>
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This case came on for hearing on February 3, 2016 before Administrative Law Judge David F. Sutton in Waynesville, 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 of the North Carolina General Statutes.

APPEARANCES

For Petitioner: Kirk Angel
 The Angel Law Firm, PLLC
 PO Box 1296
 Concord, North Carolina 28026

For Respondent: Lauren Tally Earnhardt
 North Carolina Department of Justice
 9001 Mail Service Center
 Raleigh, North Carolina 27699

ISSUE

Does substantial evidence exist to deny Petitioner's justice officer certification for the commission of the felony offense of Obtain Property by False Pretense, within the meaning of N.C. Gen. Stat. §14-100?

WITNESSES

1. Petitioner (Lisa Mae Parsons) testified on her own behalf
2. Respondent called Michael McLaughlin, field investigator with the NC Sheriffs' Education and Training Standards Commission
3. Respondent called Petitioner to testify

STATUTES AND RULES APPLICABLE TO THE CONTESTED CASE

1. The General Statutes applicable to this matter are:
 - a. G.S. 14-100

2. The Rules applicable to this matter are:
 - a. 12 NCAC 10B. 0204(a)(1)
 - b. 12 NCAC 10B. 0204(b)(2)

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge makes the following FINDINGS of FACT.

In making the FINDINGS of FACT, the undersigned Administrative Law Judge has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to, the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts of occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

FINDINGS OF FACT

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, both parties received notice of hearing, and that the Petitioner received by mail the proposed Denial of Justice Officer's Certification letter mailed by Respondent Sheriffs' Commission on January 5, 2015.

2. The North Carolina Sheriffs' Education and Training Standards Commissions (herein after referred to as the "Commission" or "Sherriffs' 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. Pursuant to 12 NCAC 10B .0204(a)(1), the Commission shall revoke or deny the certification of a justice officer when the Commission finds that the applicant for certification or certified officer has committed or been convicted of: (1) a felony.

4. Lisa Mae Parsons (herein after referred to as "Petitioner") is an applicant for certification as a detention officer with the Watauga County Sheriff's Office. Petitioner was denied certification due to the commission of the felony offense of "Obtain Property by False Pretense" while working as the controller for the Taylorsville Ford Dealership (hereinafter "the Dealership"). (R. Exhibit 1)

5. Petitioner began working for the Dealership in 2005 as the controller and continued in that position once Bill Meehan bought the Dealership in 2007. As part of Petitioner's duties, she reviewed the documentation from the sale of vehicles, corrected any discrepancies and entered financial information into the appropriate accounts. Petitioner was listed on the signature cards for the dealership which authorized her to sign checks. Also listed on the signature cards were the owner, Bill Meehan, and a manager, Buddy Sebastain. There were two signature lines on each check. Petitioner was not authorized to write checks to herself.

6. In the spring of 2008, Petitioner was charged with nineteen (19) felony counts of Obtaining Property by False Pretenses when she wrote checks from the Dealership to herself and signed both signature lines. (R. Exhibit 2)

7. Over a five (5) month period from December 2007 through May 2008, Petitioner wrote nineteen (19) checks payable to herself and although these checks required two signatures, Petitioner signed both signature lines. (R. Exhibit 3)

8. Petitioner signed a Promissory Note on May 11, 2009, which provided that "this note is given in evidence of debt created by illegal conversion of money or property and not as a new consideration for such indebtedness." Petitioner executed the Promissory Note and agreed to compensate the victim because Petitioner fraudulently issued checks to herself in order to receive money she was not entitled to. Petitioner agreed to pay \$250.00 per month until she covered the debt of \$6,700.00. (R. Exhibit 4) Petitioner paid the promissory note in full in order to have the criminal charges dismissed.

9. On August 1, 2011, a Dismissal Notice of Reinstatement was filed in Alexander County District Court dismissing the charges against Petitioner and stating the reasons for the dismissal was "Other" and listed "restitution paid in full." (R. Exhibit 7)

10. Michael McLaughlin is employed with the Respondent Commission as a field investigator. Mr. McLaughlin was the investigator assigned to investigate this case. Mr. McLaughlin spoke with the charging officer, the General Manager at the Dealership, Mr. Eric Settle, and Mr. Buddy Sebastian's wife who explained that Mr. Sebastian had medical problems and was unavailable. Mr. McLaughlin learned that Mr. Sebastian passed away in November 2014. During his investigation, Mr. McLaughlin obtained documents from the Taylorsville Police Department. It was Mr. McLaughlin's conclusion, based on the information he gathered during his investigation, that Petitioner was not authorized to sign the checks to herself that she was charged with writing.

11. Mr. Sebastian provided a written statement to the Taylorsville Police Department, dated June 23, 2008, regarding a meeting held on May 23, 2008, which included himself, Mr. Meehan, Mr. Eric Settle and Petitioner. At this meeting, Petitioner admitted to taking approximately \$8,400.00 because she felt she deserved more than what she was being paid and Petitioner agreed to pay the money back from a home equity loan. The meeting concluded with Petitioner being dismissed from the Dealership. (R. Exhibit 8)

12. Petitioner's version of the events lack credibility. She did not provide any documents to support her testimony and her explanations are not plausible. The undersigned finds that Petitioner engaged in a fraudulent pattern of conduct whereby she would write checks to herself without authorization from her employer.

CONCLUSION OF LAW

1. To the extent that the foregoing Findings of Fact contain conclusions of law, or that the Conclusions of Law below are findings of fact, they should be so considered without regard to their given labels.

2. The parties are properly before the undersigned Administrative Law Judge and jurisdiction and venue are proper.

3. Pursuant to 12 NCAC 10B .0204(a)(1), the Commission shall revoke or deny the certification of a justice officer when the Commission finds that the applicant for certification or certified officer has committed or been convicted of: (1) a felony.

4. N.C. Gen. Stat. §14-100 makes it a felony to knowingly by any means of false pretense whatsoever, obtain or attempt to obtain goods or any other thing of value from any person within this State with the intent to cheat or defraud the person. The elements of this criminal offense can be summarized as follows: 1) the individual makes a false representation; 2) that is calculated and intended to deceive; and 3) the representation does in fact deceive another person; and 4) the individual thereby obtains or attempts to obtain goods or any other thing of value from that other person.

5. Respondent has the burden of proof in this contested case filed pursuant to Article 3A of Chapter 150B of the North Carolina General Statutes. Respondent has proven by a preponderance of the evidence offered at the hearing that Petitioner committed the felony offense of Obtaining Property by False Pretenses in violation of N.C. Gen. Stat. 14-100. The evidence establishes that Petitioner falsely wrote numerous checks to herself from the Dealership account without the authority or permission of her employer. Petitioner fraudulently signed both signature blocks on a series of checks in order to steal thousands of dollars from the Dealership. Petitioner's employer was defrauded by the Petitioner over several months. Once the Dealership became aware of this illegal activity, Petitioner was immediately terminated and was required to pay restitution or face criminal prosecution for her felonious conduct.

PROPOSAL FOR DECISION

NOW, THEREFORE, based on the foregoing, Findings of Fact and Conclusions of Law, it is proposed that Respondent deny Petitioner's certification.

NOTICE

The agency making the final decision in this contested case 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).

The agency that will make the final decision in this contested case is the North Carolina Sheriffs' Education and Training Standards Commission.

A copy of the final agency decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency and a copy shall be furnished to any attorney of record. N.C.G.S. § 150B-42(a).

This the 6th day of April, 2016.

David F Sutton
Administrative Law Judge