

STATE OF NORTH CAROLINA
COUNTY OF ROBESON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DOJ 02028

JAMES ALVIN HUNT,
Petitioner,

v.

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

)
)
)
)
)
)
)
)
)
)
)

PROPOSAL FOR DECISION

This case came on for hearing on July 15, 2015 before Administrative Law Judge Melissa Owens Lassiter in Fayetteville, North Carolina pursuant to N.C.G.S. § 150B-40(e), and Respondent's request for designation of an Administrative Law Judge to preside at the hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes.

APPEARANCES

Petitioner:	James Alvin Hunt, Pro Se 4165 Old Whiteville Road Lumberton, North Carolina 28358
Respondent:	Lauren Tally Earnhardt Attorney for Respondent Department of Justice Law Enforcement Liaison Section 9001 Mail Service Center Raleigh, North Carolina 27699-9001

ISSUES

Does substantial evidence exist for Respondent to deny Petitioner's correctional officer certification for three years for knowingly making material misrepresentations?

RULES AT ISSUE

12 NCAC 09G .0504(b)(6)

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, having weighed all the evidence, and assessed the credibility of the witnesses by taking into account the appropriate facts 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 or 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, the undersigned hereby makes the following Findings of Fact:

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 Petitioner received by certified mail, the proposed denial of correctional officer certification letter, mailed by Respondent, the North Carolina Criminal Justice Education and Training Standards Commission (hereinafter "The Commission"), on March 3, 2015.

2. Respondent, North Carolina Criminal Justice Education and Training Standards Commission, has the authority granted under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 09G, to certify correctional officers and to revoke, suspend, or deny such certification.

3. Petitioner was previously certified as a law enforcement officer with the Pembroke Police Department from September 3, 2008 until his separation on August 13, 2009. In August of 2009, Petitioner was given an unannounced drug test, and tested positive for cocaine, which resulted in his resignation from the Pembroke Police Department.

4. On September 23, 2014, Respondent received a Report of Appointment/Application for Certification Form F-5A for the Division of Adult Correction and Juvenile Justice on behalf of Petitioner. Petitioner signed the Form F-5A on July 2, 2014. Petitioner answered "No" to question # 3 on Form F-5A, "Have you ever used any illegal drugs?" Petitioner did not disclose his previous drug use while certified and working with Pembroke Police Department.

5. Petitioner's signature on the 2014 F-5A indicated that, among other things, he understood and agreed that "any 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."

6. Petitioner provided multiple written statements to Respondent. In his November 25, 2014 statement, Petitioner admits that he "made a mistake on [his] F-5A form question #3. [He] did use marijuana in High school around the year of 1997 1998." In this statement, Petitioner did not disclose his previous cocaine use.

7. In his December 15, 2014 statement to Respondent, Petitioner admitted his use of cocaine by stating:

I did have a positive drug screen in the year of 2009... I tested positive for cocaine at the time. I was going threw [sic] a lot of things at the time. I was asked to resign from the department.

8. At trial, Petitioner admitted to not originally disclosing his past drug use of marijuana and cocaine. He knew honesty was key, but he was worried disclosure would keep him from being employed with the Division of Adult Correction. He claimed the Pembroke Police Chief told him that if he resigned from employment, "it" wouldn't show up. Based upon the Chief's statement, Petitioner checked "no" in responding to question no. 3 on his Form F-5A. Since being hired, Petitioner has passed two drug tests, one in October of 2014 and one in March or April of 2015. Petitioner is a widower who is raising his two daughters, and wants to continue working as a corrections officer.

9. No other witnesses testified for Petitioner.

CONCLUSIONS OF LAW

1. The parties are properly before the undersigned Administrative Law Judge 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 this matter. To the extent that the findings of Facts contain Conclusions of Law, or that the Conclusions or Law are Findings of Fact, they should be so considered without regard to the given labels.

3. 12 NCAC 09G .0504(b)(6) states: The Commission may, based on the evidence for each case, suspend, revoke, or deny the certification of a corrections officer when the Commission finds that the applicant for certification or the certified officer:

(6) has knowingly made a material misrepresentation of any information required for certification or accreditation.

4. 12 NCAC 09G .0505(b)(5) provides that the period of sanction for a material misrepresentation of any information required for correctional officer certification shall be not less than three years; however, the Commission may either reduce or suspend the period of sanction or substitute a period of probation in lieu of suspension of certification following an administrative hearing.

5. The findings of Respondent's Probable Cause Committee are supported by substantial evidence, and are not arbitrary and capricious.

6. Petitioner has the burden of proof in the case at bar. Petitioner has not shown by a preponderance of the evidence that he did not knowingly make a material misrepresentation on his 2014 Report of Appointment/Application for Certification. Respondent's proposed sanction regarding Petitioner's application for certification is supported by substantial evidence.

PROPOSAL FOR DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned proposes that Respondent Commission deny Petitioner's certification for a period of three (3) years.

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 19th day of August, 2015.

Melissa Owens Lassiter
Administrative Law Judge