

STATE OF NORTH CAROLINA
COUNTY OF MITCHELL

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15DOJ02533

CRYSTAL SPARKS KING PETITIONER, V. N C CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION RESPONDENT.	PROPOSAL FOR DECISION
---	------------------------------

This case came on for hearing on August 3, 2015 before Administrative Law Judge J. Randall May 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, Chapter 150B of the North Carolina General Statutes.

APPEARANCES

Petitioner: Crystal Sparks King
185 Grassy Hill Lane
Spruce Pine, North Carolina 28777

Respondent: Hal F. Askins, Special Deputy Attorney General
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 knowingly making a material misrepresentation?

Does substantial evidence exist for Respondent to suspend Petitioner's law enforcement certification for knowingly making a material misrepresentation?

RULES AT ISSUE

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

12 NCAC 09A .0204(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, the undersigned Administrative Law Judge makes the following FINDINGS OF FACTS.

In making the FINDINGS OF FACTS, the undersigned has weighed all the evidence and has 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.

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 certified mail, the proposed denial of correctional officer certification and proposed suspension of law enforcement 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 and Chapter 09A, to certify law enforcement officers and to revoke, suspend, or deny such certification.

3. 12 NCAC 09G .0504(b)(6) provides that 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 has knowingly made a material misrepresentation of any information required for certification or accreditation.

4. 12 NCAC 09A .0204(b)(6) provides that the Commission may suspend, revoke, or deny the certification of a criminal justice officer when the Commission finds that the applicant for certification or the certified officer has knowingly made a material misrepresentation of any information required for certification or accreditation.

5. Petitioner completed and submitted a Division of Adult Correction and Juvenile Justice Report of Appointment/Application for Certification Form F-5A (DAC) on May 22, 2014. Petitioner's responses on DAC Form F-5A were sworn and notarized as true and accurate.

6. In response to question #3; "Have you ever used any illegal drugs?" Petitioner responded, "No".

7. Petitioner had previously been certified by the Mitchell County Sheriff's Office and on her application Personal History Statement Form F-3 completed on June 6, 2006 in response to question # 44; "Have you ever used marijuana?" Petitioner indicated, "Yes". She further explained that she had tried marijuana three times during high school, never used it regularly. In response to question #45; "Have you ever used any other illegal drugs, including but not limited to opiated, pills, heroin, cocaine, crack, LSD, etc?" Petitioner answered, "Yes". She further stated, "When I was in my 20's I was offered cocaine and I tried that a couple of times, but never again after that." Petitioner's responses on this form were sworn and notarized as true and accurate.

8. Petitioner had previously been certified with Beech Mountain Police Department and on her Personal History Statement Form F-3 answered question #44; "Have you ever used marijuana?" "Yes". Petitioner then stated, "Only on occasion, but not on a regular basis". In response to question #45; "Have you ever used any other illegal drugs, including but not limited to opiated, pills, heroin, cocaine, crack, LSD, etc?" Petitioner answered "Yes". Petitioner then stated, "In my early 20's I tried cocaine at a party but never again after that." Petitioner's responses on this form were sworn and notarized as true and accurate.

9. When questioned about her denial of using any illegal drugs as provided in her answer to the DAC question, Petitioner's explanation was that she had forgotten about using illegal drugs in the past, notwithstanding her previous answers revealing drug usage.

10. Petitioner further represented that she was not assisted or coached in her inaccurate answers and that based on her own personal admissions of illegal drug use, the answer on her DAC application form was inaccurate.

11. Petitioner graduated third in her Basic Law Enforcement Training class and is a graduate of Lees-McRae College, having been on the Dean's List for academic achievement.

12. Petitioner is a single mother of two who is divorced due to her ex-husband's drug addiction. She has previously received law enforcement training in knowledge and recognition of illegal drugs and has personally charged individuals with possession and use of illegal drugs as part of her law enforcement duties.

13. Petitioner's explanation that she had forgotten that she ever used marijuana and cocaine is not credible given the totality of the evidence presented at the administrative hearing.

14. Petitioner made a material misrepresentation of information required to be disclosed to the Respondent within the meaning of 12 NCAC 09G .0504(b)(6) and 12 NCAC 09A .0204(b)(6).

15. A preponderance of the evidence presented at the administrative hearing establishes that Petitioner's application for DAC certification is subject to denial pursuant to 12 NCAC 09G .0504(b)(6) based on Petitioner making a material misrepresentation on the May 22, 2014 DAC

Form F-5A denying her prior use of illegal drugs. Further, the same evidence establishes that Petitioner's certification as a criminal justice officer is subject to suspension or revocation.

16. Petitioner submitted a narrative in the place of a Proposal for Decision and in this she explained her efforts to become certified while rearing two children and graduating from Lees McRae College. In addition to this she attached several character references and letters of recommendation. These include letters and emails from Donald W. Street, Sheriff of Mitchell County; Marvin Jay Hefner, Retired Chief of Police of Beech Mountain; Jerry Turbyfill, Deputy Detective, Avery County Sheriff's Office, as well as several others.

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 09A .0204(b)(6) states that the Commission may suspend, revoke, or deny the certification of a criminal justice 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 .0504(b)(6) states that 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.

5. 12 NCAC 09A. 0205(b)(4) provides that when the Commission suspends or denies the certification of a criminal justice officer, the period of sanction shall be not less than five years; however, the Commission may either reduce or suspend the period of sanction under Paragraph (b) of this Rule or substitute a period of probation in lieu of suspension of certification following an administrative hearing, where the cause of sanction is (4) material misrepresentation of any information required for certification or accreditation.

6. 12 NCAC 09G .0505(b) provides that when the Commission suspends or denies the certification of a correctional officer pursuant to 12 NCAC 09G .0504, the period of sanction shall be not less than three (3) years; however, the Commission may either reduce or suspend the period of sanction under Paragraph (c) of this Rule or substitute a period of probation in lieu of

suspension of certification following an administrative hearing, where the cause of sanction is material misrepresentation of any information requires for certification or accreditation.

7. The findings of the Probable Cause Committee of the Respondent are supported by substantial evidence and are not arbitrary and capricious.

8. 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. N.C.G.S. § 150B-29(a). The administrative law judge shall decide the case based upon the preponderance of the evidence. N.C.G.S. § 150B-34(a).

9. Petitioner has the burden of proof in the case at bar. Petitioner has failed to show by a preponderance of the evidence that the Respondent Commission improperly proposed to deny Petitioner's application for certification and to suspend or revoke Petitioner's criminal justice officer certification.

PROPOSAL FOR DECISION

After hearing this case, the Undersigned is of the opinion that there is sufficient evidence in the record to properly and lawfully support the above Findings of Fact and Conclusions of Law and is also of the opinion that certification could be denied. However, considering the totality of the evidence, specifically reviewing the character references in support of Petitioner, as well as her educational efforts to improve her position in life, the Undersigned proposes that the Petitioner's certification as a law enforcement officer be granted on a probationary status as allowed by law.

The Undersigned further recommends that Commission action on Petitioner's correctional officer certification be made not inconsistent with the above proposal.

NOTICE AND ORDER

The agency that will make the final decision in this contested case is the North Carolina Criminal Justice Education and Training Standards Commission. 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 the 8th day of October, 2015.

J. Randall May
Administrative Law Judge