

COUNTY OF WAKE

**IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DOJ 02534**

ROGER LEE INGE, JR.,

Petitioner,

V.

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

PROPOSAL FOR DECISION

THIS MATTER came on for hearing on August 25, 2015, before Senior Administrative Law Judge Fred Gilbert Morrison Jr. in Raleigh, 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: Roger Lee Inge, Jr.
6037 Ladish Lane
Raleigh, North Carolina 27610

Respondent: Whitney Hendrix Belich
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 revoke Petitioner's correctional officer certification for a period of 10 years for the commission of felony failure to return a hired motor vehicle > \$4000?

APPLICABLE STATUTES AND RULES

N.C. Gen. Stat. 14-167
12 NCAC 09G .0504(a) & .0505(a)(1)

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 Senior Administrative Law Judge makes the following **FINDINGS OF FACTS**.

In making the **FINDINGS OF FACTS**, the undersigned Senior Administrative Law Judge 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 revocation letter, mailed by Respondent, the North Carolina Criminal Justice Education and Training Standards Commission (hereinafter "The Commission"), on February 28, 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 corrections officers and to revoke, suspend, or deny such certification.

3. Petitioner is employed as a corrections officer with the North Carolina Department of Adult Corrections and Juvenile Justice.

4. Petitioner was first awarded a probationary certification by Respondent on March 5, 2004, to serve as a correctional officer. He was awarded a general certification on March 5, 2005, and is currently certified with the Division of Adult Corrections and Juvenile Justice.

5. On August 25, 2014, Respondent received a Report of Arrest from the North Carolina Department of Corrections stating that Petitioner had been charged on July 18, 2014, with the felony criminal offense of "Fail to Return Hired Motor Vehicle > \$4000," a violation of North Carolina General Statute § 14-167. A warrant for arrest alleges an offense date of "on or about July 18, 2014." The warrant alleges that Petitioner "did unlawfully, willfully, and feloniously fail to return a white 2014 Nissan Altima NC Registration CD6264 VIN: IN4AL3AP0EC155202."

6. On August 14, 2014, this charge was dismissed by the Wake County District Attorney's Office. The dismissal form indicates "Received nothing back from Enterprise, car has been returned."

7. Shannon Brown, Risk Manager for Enterprise Holdings, which owns Enterprise Rent-a-Car, testified at the hearing. Ms. Brown and those at her company began attempting to receive payment for the car, which was rented by Petitioner on May 31, 2014, while his car was in the shop for repairs, or receive the car back on June 24, 2014. Though Petitioner's insurance company had agreed to pay for the cost of the rental car initially, their coverage for the cost of the rental vehicle ended on June 23, 2014. A message was left for Petitioner on June 24, 2014, notifying him of this fact and informing him that, if he wished to keep the rental car, he would be responsible for paying the cost to Enterprise from that point forward. Someone at Enterprise spoke with Petitioner on June 25, 2014, and on July 1, 2014, someone made a payment for a portion of the rental amount but left a substantial amount of the bill still due to Enterprise. Further attempts to contact Petitioner by Enterprise, including phone calls to multiple numbers provided on the rental application, messages left, and even driving by Petitioner's address, were unsuccessful and no further payments were made by Petitioner and the car was not returned. The contract with Enterprise, signed by Petitioner, stated the rental was to end June 30, 2014.

8. On July 10, 2014, upon receiving no further payments or communication regarding Petitioner's rental car, Enterprise sent a "demand letter" to Petitioner stating:

"Please consider this letter a formal demand for the immediate return of the vehicle to Enterprise. Failure to return the vehicle within 72 hours from the date of this letter may subject you to civil and/or criminal liability. You or anyone else's continued use of the vehicle is unauthorized and in breach of your contract with Enterprise."

Petitioner did not return the vehicle and the Wake County Sheriff's Department was contacted on July 18, 2014. Pursuant to information provided by Ms. Brown, the Wake County Sheriff's Office issued a warrant for Petitioner's arrest on July 18, 2014. Despite being notified of the outstanding warrant on July 19, 2014, the vehicle was not returned to Enterprise Rent-a-Car until July 21, 2014. As of the date of this hearing, Petitioner still owes \$386.93 in overage charges to Enterprise.

9. Wake County Sheriff's Deputy Joseph Tarlton testified at the hearing. On July 18, 2014, he responded to a call from Enterprise Rent-a-Car regarding a rental car that had not been returned. After speaking with Ms. Brown and her co-workers regarding the situation with Petitioner's rental car, Deputy Tarlton attempted to contact Petitioner and convince him to return the car in order to prevent further criminal prosecution. He was unsuccessful and took out a warrant for Fail to Return Hired Motor Vehicle > \$4000. Deputy Tarlton continued his attempts to contact Petitioner and Petitioner was eventually contacted on July 19, 2014, and served with the outstanding warrant.

10. Michelle Shilling, an investigator for Respondent, testified at the hearing. During the course of Ms. Shilling's investigation, Petitioner submitted several statements regarding the incident at issue. Petitioner's statement included a contention that he believed his mechanic had spoken to the insurance company and arranged for him to keep the car for a "longer period of time." He stated that even though the rental car company did contact him a "couple of days" later and inform him that the insurance company was not in fact paying for the car, he "thought that I

would just have to pay the overage on the car.” Despite requests by Ms. Shilling to produce some sort of documentation showing the mechanic’s repairs on his car, he was unable to produce any documents from the mechanic making repairs. Ms. Shilling was able to contact employees of Hollywood Towing who stated they also did not have records detailing the repairs or other information about Petitioner’s dealing with them. An employee from Hollywood Towing did remember that Petitioner never picked up the car and eventually the car was turned over by the finance company to Hollywood Towing and sold by them.

11. Petitioner testified at the hearing. He stated that his car had been hit by a deer and the insurance company agreed to pay for the car to be repaired and for him to obtain a rental car. Petitioner did not remember any specific conversations with Enterprise about returning the car, but he did know that from June 25, 2014, on he was responsible for paying Enterprise. Petitioner stated that in fact he had never paid any of the overage fees to Enterprise but his wife had called in and paid a portion at some point. Petitioner admitted to receiving the “demand letter” from Enterprise, but states his roommate didn’t tell him about it until a week later. Petitioner admitted that, despite this letter and even after the warrant for his arrest had been issued, he did not return the rental car until July 21, 2014. Petitioner also admitted that, as of this hearing, he had still not paid the overage fees due to Enterprise though he testified he had tried to have others make a payment for him and they were unable to do so. Petitioner presented a letter from Hollywood Towing stating Petitioner was experiencing “financial distress” at the time they worked on his car and that their office “did speak with the rental company on several occasions keeping them up to date on all issues that were going on with the insurance company.”

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 of Law are Findings of Fact, they should be so considered without regard to the given labels.

3. 12 NCAC 09G .0504(a) provides that the North Carolina Criminal Justice Education and Training Standards 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 committed or been convicted of a felony offense.

4. 12 NCAC 09G .0505(a)(1) provides that when the North Carolina Criminal Justice Education and Training Standards Commission suspends or denies the certification of a corrections officer for the commission of a felony, the period of sanction shall be ten years.

5. Failure to Return Hired Motor Vehicle >\$4000 is a felony offense in the State of North Carolina. Petitioner committed this felony offense.

6. Respondent may properly revoke Petitioner's certification for the commission of a felony offense following his certification.

PROPOSAL FOR DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned proposes that Petitioner's certification as a correctional officer be revoked for a period of 10 years for the commission of a felony criminal offense.

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 N. C. Criminal Justice Education and Training Standards Commission.

This the 22nd day of October, 2015.

Fred Gilbert Morrison Jr.
Senior Administrative Law Judge