

NORTH CAROLINA

OFFICE OF ADMINISTRATIVE HEARINGS

WAKE COUNTY

15 DOJ 3111

BRIANNA CONEESE BILLUPS)
)
Petitioner)
)
v)
)
NORTH CAROLINA CRIMINAL)
JUSTICE EDUCATION AND)
TRAINING STANDARDS COMMISSION)
)
Respondent)
)

PROPOSAL FOR DECISION

This matter coming on to be heard and being heard August 24, 2015, with the Petitioner appearing in this matter pro se, and the Respondent being represented by Assistant Attorney General Ms. Whitney Hendrix Belich, and based upon the evidence presented and the arguments of the parties, the undersigned makes the following findings of fact:

1. The Petitioner is a citizen and resident of Wake County, North Carolina.
2. The Respondent has the authority to certify correctional officers in this state and to revoke, suspend, or deny any such certification.
3. Petitioner is employed as a corrections officer with the North Carolina Department of Adult Corrections and Juvenile Justice.
4. Petitioner received her probationary correctional officer certification on April 8, 2013.
5. On January 25, 2014, Petitioner was charged with violating N.C. Gen. Stat. § 20-166(c)(1), hit and run/leaving the scene of an accident with property damage.
6. On April 3, 2014, said charge was dismissed in Wake County District Court.
7. On March 11, 2014, however, Respondent was notified of the incident and opened an investigation.
8. Respondent assigned Ms. Michelle Shilling as the investigator for this incident.

9. As part of her investigation, Ms. Shilling spoke with Raleigh police officer Matthew Hilkert. Officer Hilkert told Ms. Shilling and testified that he responded to the accident scene on January 25, 2014.

10. Officer Hilkert was dispatched to a traffic collision on westbound Interstate 440. Upon arrival, he observed two damaged vehicles but only one driver at the scene.

11. A damaged Saturn vehicle was at the scene, but the driver of that vehicle could not be located.

12. Officer Hilkert looked inside the Saturn and observed that the driver's side airbag had deployed.

13. A K-9 unit was called in to assist in locating the driver of the Saturn. The K-9 found only one "track" from the car and followed it to a building off of the Interstate where they found Petitioner hiding behind a dumpster. The K-9 handler brought Petitioner back to the scene where she spoke with Officer Hilkert.

14. Officer Hilkert did not see any injuries to the Petitioner and she did not request medical attention.

15. Petitioner admitted the Saturn was her vehicle, and that she had been involved in an accident and left the vehicle in the roadway.

16. During this conversation, Officer Hilkert noticed an odor of alcohol coming from Petitioner's breath.

17. Petitioner told Officer Hilkert that she had been carjacked and the crash was the result of her grabbing the steering wheel from the passenger seat while the vehicle was in motion.

18. Officers focused their efforts on investigating the purported felony carjacking, and the Petitioner was not required to undergo additional alcohol screening for a DWI.

19. Officer Hilkert and other officers investigated Petitioner's claims, but Petitioner provided insufficient and inconsistent information regarding the incident, including the following:

- a. Petitioner claimed to be in the passenger seat of the vehicle after being carjacked. However, there was a pile of clothes on the passenger seat that did not appear to be "pressed down" as if someone had been sitting on them.
- b. The passenger side airbag had not deployed.
- c. Petitioner was unable to provide basic details about the perpetrator, the firearm purportedly used, or the direction in which her attacker fled from the car.

20. Following attempts by the Raleigh Police Department to investigate Petitioner's claims, Petitioner was charged with the driving offense set forth above.

Based upon the foregoing findings of fact, the undersigned concludes as a matter of law:

1. The Office of Administrative Hearings has jurisdiction over the parties and subject matter herein.
2. Both parties were properly noticed for hearing.
3. The term misdemeanor for corrections officers is defined in 12 NCAC 09G.0102(9) as those criminal offenses which are not classified as felonies. Pursuant to 12 NCAC 09G.0102(9)(www), hit and run/leaving the scene of an accident with property damage as set forth in N.C. Gen. Stat. § 20-166(c)(1) is a misdemeanor offense.
4. 12 NCAC 09G .0504(b)(3) 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 has committed or been convicted of a misdemeanor as defined in 12 NCAC 09G .0102 after certification.
5. 12 NCAC 09G .0505(b)(1) states that when the Commission suspends or denies the certification of a corrections officer pursuant to 12 NCAC 09G .0504 of this Section, the period of sanction 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, where the cause of sanction is commission or conviction of a misdemeanor as defined in 12 NCAC 09G .0102.
6. The findings of the Probable Cause Committee of the Respondent are supported by substantial evidence and are not arbitrary and capricious.
7. 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).
8. Petitioner has the burden of proof in this matter.
9. A preponderance of the evidence shows Petitioner committed the misdemeanor of Hit/Run – Leaving the Scene of a Crash with Property Damage.

PROPOSAL FOR DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned recommends the Petitioner's certification as a correctional officer be suspended for a period of not less than three years for the commission of the misdemeanor offense of Hit/Run – Leave Scene of Crash with Property Damage.

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 Criminal Justice Education and Training Standards Commission.

This the 26th day of October, 2015.

Philip E. Berger, Jr.
Administrative Law Judge