

STATE OF NORTH CAROLINA
COUNTY OF LINCOLN

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DOJ 03885

ASHLEY BRYANT HELMS,)
)
 Petitioner,)
)
 v.)
)
 NORTH CAROLINA SHERIFFS')
 EDUCATION AND TRAINING)
 STANDARDS COMMISSION,)
)
 Respondent.)
 _____)

PROPOSAL FOR DECISION

On September 8, 2015, Administrative Law Judge Selina M. Brooks heard this matter in Morganton, 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: R. Wade Carpenter
Attorney for Petitioner
PO Box 1058
Gastonia, NC 28053-1058

Respondent: Matthew L. Boyatt, Assistant Attorney General
Attorney for Respondent
N.C. Department of Justice
9001 Mail Service Center
Raleigh, North Carolina 27699-9001

WITNESSES

For Petitioner: Lieutenant Jordan Cody, Lincoln County Sheriff's Office
Sheriff Carpenter, Lincoln County
Janet Nekoosl
Amy Melissa Helms
Ashley Bryant Helms

For Respondent: Officer Eric Seagale, Gastonia Police Department
Captain Rodney Aldridge, Gastonia Police Department

EXHIBITS

Petitioner's Exhibits 1 through 6 were admitted.

Respondent's Exhibits 1 through 12 were admitted.

ISSUE

Whether Respondent's proposed denial of Petitioner's justice officer certification is supported by substantial evidence.

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 Notification of Probable Cause to Deny Justice Officer Certification letter, mailed by Respondent on March 26, 2015.

2. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter the "Sheriffs' 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. 12 NCAC 10B .0301(a)(8) provides that all justice officers employed or certified in the State of North Carolina shall be of good moral character.

4. 12 NCAC 10B .0204(b)(2) further provides the Sheriffs' Commission shall revoke, deny, or suspend a justice officer's certification when the Commission finds that the justice officer no longer possesses the good moral character that is required of all sworn justice officers.

5. Petitioner was employed as a police officer with the Gastonia Police Department (hereinafter "Gastonia PD") from January 11, 2002, until July 19, 2013. Petitioner served as a police officer at Gastonia PD for approximately 11 years and 6 months. Prior to his employment with Gastonia PD, Petitioner was employed as a police officer with the City of Belmont from 1995-2002. Petitioner received certification as a sworn law enforcement officer through the North Carolina Criminal Justice Education and Training Standards Commission in 1995.

6. Petitioner was terminated from his employment with Gastonia PD effective July 19, 2013 for untruthfulness regarding the use of another officer's study guide. (Respondent's Ex. 4). Petitioner was subsequently hired by the Lincoln County Sheriff's Office on September 27, 2013.

7. Petitioner is now an applicant for justice officer certification through the Sheriffs' Commission. Petitioner has not previously held certification through this Commission.

8. The Sheriff's Commission is tasked with certifying deputy sheriffs in the State of North Carolina, and with ensuring that all applicants meet the minimum standards for certification.

9. Respondent received a Report of Separation Form F-5B from Gastonia PD regarding Petitioner's employment with that agency. (Respondent's Ex. 3) Respondent learned that Petitioner separated from Gastonia PD effective July 19, 2013. Based on this information, the Sheriffs' Division was required to investigate the nature of Petitioner's separation from Gastonia PD prior to certifying Petitioner through the Sheriffs' Commission.

10. During its investigation, the Sheriff's Division learned that the Petitioner was terminated from Gastonia PD for two issues. First, on May 15, 2013, Petitioner reported that he could not come into work because his wife was in the hospital due to heart complications. It was later determined that Petitioner's wife was already discharged when Petitioner called in to work. Second, in June 2013, Petitioner retrieved a study guide from the desk of a fellow officer in order to prepare for an interview for a promotion within the department. When questioned about the study guide, Petitioner was evasive but eventually told the truth about taking the study guide. As stated above, for those reasons, Gastonia PD terminated Petitioner.

11. The Probable Cause Committee of the Sheriffs' Commission is a Committee comprised of five (5) elected Sheriffs that meets regularly to review cases and to determine whether probable cause exists to believe an applicant and/or certified justice officer's certification should be denied, revoked, or suspended.

12. Petitioner's case was submitted to the Commission's Probable Cause Committee for consideration. Among other things, that Committee considered the Gastonia PD's charging documents, investigative reports, Rules of Conduct, report of separation, and transcribed interviews of Petitioner. (Respondent's Exs. 4, 5, 6, 8 and 11). Following their review, the Probable Cause Committee found probable cause existed to deny Petitioner's application for certification based on Petitioner lacking the good moral character that is required of a sworn justice officer in this State. The basis of this finding was Petitioner's false statement to Gastonia PD during the pendency of the investigation into the two incidents. Petitioner properly requested an administrative hearing.

13. Officer E.C. Seagale with the Gastonia PD testified at the administrative hearing. Seagale is a patrol officer who served with Petitioner in the Street Crimes Unit ("SCU") of the Gastonia PD along with Petitioner. Seagale, along with Petitioner, applied for a position on the "Vice" squad. Seagale utilized a study guide entitled "Secret Squirrel Sheet" to help him prepare for his interview. Petitioner also had a copy of the same "Secret Squirrel Sheet". Members of the SCU all shared office space and some younger members even shared desks within their cubicles. Members of the SCU would often take items from the desks of others in the SCU and even play practical jokes on each other. Seagale, however, placed his study guide in an area he considered to be private.

14. Seagale, after his interview, wrote down notes on his study guide to help him in future interviews. These notes include the acronyms "RICO" and [sic] "OSADEF". Seagale placed the study guide on his desk with several other folders.

15. Petitioner, on May 20, 2013, was on the telephone with his wife when he received a call requesting him to attend an interview for the Vice position within the next ten minutes. Petitioner was at the Gastonia PD when he received this call. Instead of going back to his patrol car to retrieve his study guide (which was five minutes away), Petitioner retrieved Seagale's study guide from Seagale's desk without Seagale's permission. Seagale came in the rear door to the SCU office and noticed Petitioner reading Seagale's study guide. Seagale briefly spoke with Petitioner, wishing him good luck in the interview. Seagale did not question Petitioner about why he was using Seagale's study guide. The Undersigned finds his testimony credible and reliable.

16. Petitioner was selected for the Vice position on May 30, 2013. Before transferring to that unit, a member of the SCU complained about Petitioner using Seagale's study guide. Based on this complaint, the Office of Professional Standards ("OPS") initiated an investigation.

17. Petitioner initially denied taking Seagale's study guide when interviewed by OPS. Ultimately, Petitioner confessed to taking the study guide during his interview and explained that it was not his intention to gain an advantage by using Seagale's notes. As stated above, Petitioner was terminated for his actions.

18. Captain Rodney Aldridge testified at the administrative hearing. In 2013, Aldridge served as Sergeant for the SCU. Aldridge investigated Petitioner's whereabouts on May 15, 2013 when Petitioner reported that he could not come into work because his wife was in the hospital. Petitioner's wife was admitted to Carolinas Medical Center in Lincoln County on May 15, 2013 and subsequently released that afternoon. Petitioner admitted that his wife was already discharged from the hospital when he called Aldridge. Petitioner was very emotional and upset due to his wife's health issues that day. Petitioner met with Aldridge later in the evening on May 15, 2013 and apologized for being untruthful. Aldridge accepted his apology and did not report this incident through the chain of command. The Undersigned finds his testimony credible and reliable.

19. The Sheriff of Lincoln County, David Carpenter, testified at the administrative hearing. Sheriff Carpenter was aware of the study guide incident and the hospital incident that led to Petitioner's termination. Sheriff Carpenter hired Petitioner based upon his years of experience and his qualifications in law enforcement. Petitioner has thrived in Lincoln County and was recently promoted to Sergeant. Sheriff Carpenter believes Petitioner possesses the good moral character required of all justice officers and voluntarily came to this hearing to show his support and to convey this belief to the Undersigned and to the Sheriff's Commission. Sheriff Carpenter said that Petitioner was punished in 2013 for those two isolated incidents in a long, successful career in law enforcement. The Undersigned finds his testimony credible and reliable.

20. Lt. Jordan A. Cody of the Lincoln County Sheriff's Office also testified at the hearing. At the direction of Sheriff Carpenter, Lt. Cody conducted a background search of Petitioner. His research included interviews with Petitioner's former co-workers at Gastonia PD. Lt. Cody reported that Petitioner's co-workers spoke very highly of Petitioner. Lt. Cody also reported to Sheriff Carpenter about the two incidents that led to Petitioner's termination. Based upon his background check and interviews, Lt. Cody recommended him for employment based

upon his training and experience. Lt. Cody also found Petitioner to be very respectful and an excellent asset to Lincoln County. The Undersigned finds his testimony credible and reliable.

21. Petitioner's wife, Amy Melissa Helms, testified at the hearing. She produced a copy of her Patient Statement (Petitioner's Ex. 3) which confirmed her admission to Carolinas Medical Center in Lincoln County on May 15, 2013. She is a Registered Nurse and has been married to Petitioner for fifteen (15) years. They have two children. Mrs. Helms confirmed she experienced an elevated heart rate on the morning of May 15, 2013. Petitioner was studying for his "Vice" interview at home when his wife asked him to take her to the emergency room based upon her unexpected medical condition. Mrs. Helms described her husband as being very upset and worried about her health. She testified that Petitioner was crying at one point, concerned for her well-being. Mrs. Helms did need her husband's assistance during her hospitalization and especially after she was released that afternoon to help her and to help with their children. She was unaware of what reason her husband gave his employer for missing work that day. When questioned about her husband's behavior regarding the hospital incident and the study guide incident, she expressed disappointment in him. She further opined that this behavior was uncharacteristic of her husband and his termination placed a tremendous amount of stress on their family. Mrs. Helms testified that she trusted her husband and was happy that he sought counseling to understand his behavior and to not repeat the mistakes he made in 2013 when faced with similar stressors. She further testified that he was thriving in his new job with the Lincoln County Sheriff's Office and was even promoted to Sergeant. The Undersigned finds her testimony credible and reliable.

22. Petitioner's counselor testified at the hearing. Mrs. Janet Nekooasl's resume was received into evidence (Petitioner's Ex. 2). She is a licensed professional counselor and has worked in that capacity since 1995. She is a member of the American Counseling Society as well as the Association for the Treatment of Sexual Abusers. Mrs. Nekooasl's practice focuses in treating individuals and families as well as sex offenders, their families and victims of sexual abuse. Petitioner sought her help to understand his actions surrounding the hospital incident and the study guide incident. He also sought her help to learn coping mechanisms should he experience similar stressors in life in the future. Mrs. Nekooasl met with Petitioner four (4) times prior to this hearing. She assessed him and further opined that he did have good moral character despite his behavior at Gastonia PD in 2013. When questioned by Respondent's counsel about her knowledge of Petitioner's actions at Gastonia PD, she testified that she was provided all of the discovery, including Petitioner's internal affairs file. She attributed Petitioner's behavior to stressors in his life including adjustment disorder with anxiety. Mrs. Nekooasl indicated that Petitioner was scheduled for more sessions regardless of the outcome of this hearing. The Undersigned finds her testimony credible and reliable.

23. Petitioner testified at the hearing. He apologized for his behavior surrounding the two incidents that led to his termination from Gastonia PD. The Undersigned finds his apology to be sincere. Honesty and truthfulness are among the most important attributes of a sworn law enforcement officer. When questioned about the hospital incident, Petitioner responded that he was extremely emotional that day and concerned about his wife's acute medical condition. Petitioner admitted that his wife was already discharged from the hospital in Lincoln County when he called Captain Aldridge and told him that his wife was still in the hospital. Petitioner, later that

evening, apologized to Captain Aldridge for not being truthful. Petitioner further admitted that he should have taken a sick day to care for his wife. He was remorseful for his behavior and understood why Captain Aldridge was upset with him.

24. Regarding the study guide incident, Petitioner admitted that he should not have borrowed Officer Seagale's study guide without asking his permission. Petitioner had the most experience in the Street Crimes Unit and felt that he was well qualified for the Vice position. Petitioner explained that he took Seagale's study guide off Seagale's desk because Petitioner's study guide was locked in his patrol car and his interview was in ten minutes. Petitioner regrets not taking the time to walk to his patrol car to retrieve his own study guide.

25. Petitioner apologized for initially denying that he took the study guide from Officer Seagale's desk during his interview with the OPS. His actions ultimately led to his termination at Gastonia PD and called into question his integrity and whether or not he possessed the good moral character required of all justice officers.

26. Aside from the hospital incident on May 15, 2013 and the study guide incident several weeks later, Petitioner's career as a law enforcement officer is exemplary. He was awarded a certificate for Commendation for Service by Gastonia PD Chief Conley on May 10, 2013 (Petitioner's Ex. 5). Petitioner's behavior during the above described incidents do raise concerns. Petitioner, however, voluntarily submitted himself to counseling to establish safeguards when faced with stressors in his personal and professional life. Furthermore, Petitioner disclosed the circumstances that led to his termination to the Lincoln County Sheriff's Office.

27. After reviewing the documents introduced into the record and after considering the sworn testimony of all witnesses at the hearing of this matter, the Undersigned finds that Petitioner's actions were isolated and not a true reflection of his overall character. For the reasons set out above, Petitioner does possess the good moral character that is required of all sworn law enforcement officers in this State.

GOOD MORAL CHARACTER

28. 12 NCAC 10B .0301(a)(8) provides that every justice officer employed or certified in North Carolina shall be of good moral character.

29. Given the totality of the evidence presented at the administrative hearing, the Undersigned finds that Petitioner possesses the good moral character that is required of all sworn justice officers in this State.

30. Based on the evidence presented and the testimony of the witnesses at the administrative hearing, Respondent's proposed denial of Petitioner's certification due to Petitioner's lack of good moral character and failure to maintain the minimum standards required of all sworn justice officers under 12 NCAC 10B .0301 is NOT supported by a preponderance of the evidence.

31. Petitioner offered several character witnesses at the administrative hearing. All of Petitioner's character witnesses were aware of Petitioner's conduct on May 13, 2013 and during the study guide incident in 2013. They were also aware of the circumstances surrounding the internal affairs investigation at the Gastonia PD involving Petitioner's conduct. Most notably, Sheriff David Carpenter of the Lincoln County Sheriff's Office believed Petitioner's conduct at Gastonia PD in May and June of 2013 was isolated. Furthermore, Sheriff Carpenter promoted Petitioner to the position of Sergeant and testified that Petitioner's integrity and service to the community demonstrated he possesses the good moral character required of all sworn justice officers in this State.

CONCLUSIONS OF LAW

1. Both parties are properly before this Administrative Law Judge and jurisdiction and venue are proper.

2. The North Carolina Sheriffs' Education and Training Standards Commission has the authority granted under Chapter 17E of the General Statutes, 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 .0301(a)(8), every justice officer employed or certified in North Carolina shall be of good moral character.

4. Pursuant to 12 NCAC 10B .0204(b)(2), the Commission shall revoke, deny or suspend the certification of a justice officer when the Commission finds that the officer fails to meet or maintain the minimum employment standards required by 12 NCAC 10B .0300.

5. Good moral character has been defined as "honesty, fairness, and respect for the rights of others and for the laws of the state and nation." In Re Willis, 288 N.C. 1, 10 (1975). In the matter of Daniel Brannon Gray v. North Carolina Sheriffs' Education and Training Standards Commission, 09 DOJ 4364 (2010), ALJ Randall May observed that generally, "isolated instances of conduct are insufficient to properly conclude that someone lacks good moral character. However, if especially egregious, even a single incident could suffice to find that an individual lacks good moral character in places [sic] of clear and especially severe misconduct." (Conclusion of Law 5)

6. The preponderance of the evidence presented at the administrative hearing establishes that Petitioner does possess the good moral character that is required of a sworn law enforcement officer in this State. His actions, while not becoming of a law enforcement officer, are not especially egregious and were isolated events over a long, decorated career.

7. Given the totality of the evidence presented at the administrative hearing, the Undersigned concludes that Petitioner possesses the good moral character that is required of all sworn justice officers in this State for the reasons set out herein.

PROPOSAL FOR DECISION

Based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the Undersigned recommends Respondent NOT deny Petitioner's certification because he does possess the good moral character that is required of sworn justice officers under 12 NCAC 10B .0300.

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.

This the 13th day of November, 2015.

Selina M. Brooks
ADMINISTRATIVE LAW JUDGE