

STATE OF NORTH CAROLINA

COUNTY OF IREDELL

RAE MARIE BISHOP,

Petitioner,

v.

NORTH CAROLINA SHERIFFS'
EDUCATION AND TRAINING
STANDARDS COMMISSION,

Respondent

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DOJ 03888

PROPOSED DECISION

This case came on for hearing on September 8, 2015 before Administrative Law Judge Selina M. Brooks 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: Rae Marie Bishop
459 Turnersburg Hwy.
Statesville, N.C. 28625

Respondent: Matthew L. Boyatt
Attorney for Respondent
Department of Justice
Law Enforcement Liaison Section
P.O. Box 629
Raleigh, N.C. 27602-0629

ISSUE

Did Petitioner knowingly make a material misrepresentation of any information required for certification as a justice officer to the North Carolina Sheriffs' Education and Training Standards Commission?

APPLICABLE RULES

12 NCAC 10B.0204(c)(1)
12 NCAC 10B.0204(c)(2)

FINDINGS OF FACT

1. Both parties received notice of hearing by certified mail more than 15 days prior to the hearing, and each party stipulated on the record that notice was proper. Petitioner received by U.S. Postal Service Mail the proposed Denial of Justice Officer's Certification letter, mailed by Respondent Sheriffs' Commission on March 26, 2015.
2. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter referred to as the "Commission" or "Sheriffs' Commission") has 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. Petitioner is an applicant for justice officer certification through the Iredell County Sheriff's Office. Petitioner is applying to become a detention officer.
4. 12 NCAC 10B.0204(c)(1) and (2) provides that the Sheriffs' Commission may deny the certification of a justice officer when the Commission finds that the applicant has:
 - (1) knowingly made a material misrepresentation of any information required for certification or accreditation from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission; or
 - (2) knowingly and designedly by any means of false pretense, deception, defraud, misrepresentation, or cheating whatsoever, obtained or attempted to obtain credit, training or certification from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission.
5. Petitioner completed a Personal History Statement (Form F-3), on or about May 26, 2014, as part of her original employment application with the Iredell County Sheriff's Office, and in order to obtain certification as a justice officer through the Sheriffs' Commission. *See R. Ex. 3.*
6. Question No. 44 of the Sheriffs' Commission Form F-3 asked the applicant to disclose whether or not she had ever been arrested by a law enforcement officer or otherwise charged with a criminal offense. The instructions cautioned Petitioner to disclose charges whether or not those charges had been expunged.
7. Petitioner disclosed in Question No. 44 of the Form F-3 that she had been charged with DUI in 1994 and that she was also charged with issuing a bad check in 1996. *See R. Ex. 3, p. 11.*
8. Following Petitioner's submission of the May 26, 2014, Form F-3 to the Respondent Commission, the Iredell County Sheriff's Office and the Respondent required Petitioner to

obtain a complete criminal history check from New York State, Petitioner's former state of residence. The New York State criminal history revealed that Petitioner had also been charged with the criminal offense of petit larceny on or about March 23, 1990. *See R. Ex. 4.* At the time she was charged, Petitioner was approximately 17 years old. Petitioner's petit larceny charge occurred 25 years ago.

9. Petitioner testified at the administrative hearing regarding the petit larceny omission on her Form F-3. Petitioner stated that she did not intentionally omit the petit larceny from her Personal History Statement. This offense occurred 25 years ago when Petitioner was 17 years old and living at home. Petitioner indicated she forgot about the charge when she completed the Form F-3 on May 26, 2014. When Petitioner completed the F-3, she remembered that she had been charged with DUI in 1994 and also with issuing a worthless check in 1996.
10. Before moving to North Carolina, Petitioner had been a licensed foster parent in New York State for hard to place, troubled juveniles. She underwent several background checks as an adult in order to adopt her 3 children from foster care. During these background checks, Petitioner was never questioned about the petit larceny charge and Petitioner was unaware of the larceny charge appearing on her State of New York background checks.
11. Petitioner's failure to disclose the petit larceny was out of mistake and was not done knowingly. Further, Petitioner has not attempted to obtain certification from the Commission through any means of false pretense or cheating. Petitioner simply did not recall having been charged with this offense until such time as she received her criminal history check from the State of New York in 2014.
12. The Petitioner failed to attend the Respondent Commission's probable cause hearing, wherein Petitioner would have been given an opportunity to explain the omission on her Form F-3.

CONCLUSIONS OF LAW

1. The parties properly are before the undersigned Administrative Law Judge and jurisdiction and venue are proper.
2. 12 NCAC 10B.0204(c)(1) and (2) states that the Sheriffs' Commission may deny the certification of a justice officer when the Commission finds that the applicant has:
 - (1) knowingly made a material misrepresentation of any information required for certification or accreditation from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission; or

- (2) knowingly and designedly by any means of false pretense, deception, defraud, misrepresentation, or cheating whatsoever, obtained or attempted to obtain credit, training or certification from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission.
3. For the reasons stated above, Petitioner did not make a knowing misrepresentation of information required for certification by omitting her 1990 petit larceny charge on her 2014 Form F-3 Personal History Statement. In addition, Petitioner has not attempted to obtain certification from the Commission through any means of false pretense or cheating. Petitioner's failure to disclose this 1990 misdemeanor criminal charge was a mistake and oversight on Petitioner's part. Petitioner disclosed her DUI and worthless check charges from the 1990s. Petitioner forgot that she had been charged with larceny when she was 17 years old.

PROPOSAL FOR DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Undersigned recommends the Petitioner's certification as a justice officer be issued.

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 October, 2015.

Selina M. Brooks
Administrative Law Judge