

STATE OF NORTH CAROLINA

COUNTY OF NASH

STANLEY COLT ROBBINS,

Petitioner,

v.

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

Respondent

**IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DOJ 04637**

PROPOSAL FOR DECISION

This case came on for hearing on October 21, 2015 before Administrative Law Judge Donald W. Overby in Halifax, 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: Joseph Hester
Attorney for Petitioner
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Respondent: Lauren Tally Earnhardt
Attorney for Respondent
Department of Justice
Law Enforcement Liaison Section
P.O. Box 629
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ISSUES

Does substantial evidence exist for Respondent to deny Petitioner's law enforcement officer certification for the commission of the Class B Misdemeanor offense of Assault on a Female?

RULES AT ISSUE

12 NCAC 09A .0204(b)(3)(A)

12 NCAC 09A .0103(23)(b)

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 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, and both parties received notice of hearing. The Petitioner received by certified mail the proposed denial letter mailed by Respondent, the North Carolina Criminal Justice Education and Training Standards Commission (hereinafter "The Commission"), on June 5, 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 09A, to certify law enforcement officers and to revoke, suspend, or deny such certification.

3. Judy Kelley, Investigator for Respondent, testified at the hearing in this matter. Ms. Kelley was assigned to investigate Petitioner's application for certification. On Petitioner's F-5A form, Petitioner listed in the criminal history section that he had been charged with assault on a female. As part of her investigation, Ms. Kelley requested documents from the Court and other agencies regarding Petitioner's assault on a female charge. Ms. Kelley's investigation showed that 911 was called to the home of Mr. Stanley Craig Robbins (Petitioner's father) because there was an issue arising when Petitioner came to pick up his son, Simon. Petitioner's father, Petitioner's mother (Georgia Robbins) and Petitioner's wife (Shannon Robbins) did not want Petitioner to take the child to another location where he had been residing with another woman. Petitioner's parents and his wife all believed that the child would be in potential harm in the presence of the other woman.

4. Petitioner and Shannon Robbins were in a back bedroom, they had words and he pushed her into a closet. Mr. Stanley Robbins pulled Petitioner off Ms. Shannon Robbins, and then he and Petitioner tussled.

5. Petitioner was charged with simple assault from the incident involving his father. Petitioner was charged with assault of a female for the incident involving his wife. Only the assault on a female is of concern to the Commission in this proceeding. The charge of assault on a female was dismissed, and the form obtained from the Court stated "mediation successful". (Respondent's Exhibit 5)

6. Ms. Kelley brought Petitioner's application and her investigation before Respondent's Probable Cause Committee in May 2015. At the meeting, Respondent's Committee found probable cause that Petitioner committed the offense of assault on a female. Respondent sent Petitioner a Proposed denial letter which explained the Committee's decision and his rights to appeal that decision.

(Respondent's Exhibit 1-7)

7. Corporal Randall Baker with the Nash County Sheriff's Office testified at the hearing. He was a Deputy at the time of the incident and responded to the call for service on a domestic violence matter at the home of Mr. Stanley Robbins on February 23, 2014. Corporal Baker knew Petitioner from working together in the Sheriff's Office prior to Petitioner's separation from the Sheriff's Office, so he knew where he was responding.

8. Petitioner was sitting outside the home when Corporal Baker arrived and was completely cooperative and friendly. Petitioner explained to Corporal Baker that they were having a dispute over the baby. Petitioner stayed outside while Corporal Baker went inside and spoke with the parties. Mr. Stanley Robbins came outside the home, was scratched and bleeding. Mr. Stanley Robbins had lacerations to his head and ear. He told Corporal Baker that he was scratched from working in the barn. Mr. Stanley Robbins denied medical care for his injuries.

9. When Corporal Baker went inside, Ms. Shannon Robbins appeared very upset, but the child was unharmed and not upset. Ms. Shannon Robbins was crying but she didn't have any noticeable injuries. Corporal Baker later found that her injuries were under her clothing. Ms. Shannon Robbins had some bruising from a "pinching" type injury under her clothing and denied medical care.

10. During the course of his investigation, Corporal Baker found that this incident began because Shannon Robbins and Petitioner's parents did not want Petitioner taking their child and leaving. As a result, Petitioner and his wife argued. At the scene, Ms. Shannon Robbins explained that Petitioner asked her to step into a closet to speak with her. She said she wasn't going into the closet. He grabbed her and forced her into the closet to talk, and she fell. Shannon Robbins yelled and Mr. Stanley Robbins came to help. Shannon Robbins had the child in her arms when she fell. Petitioner explained to Corporal Baker that as he tried to talk to Ms. Shannon Robbins, she lost her foot in the closet, and Petitioner grabbed her to try to stop her from falling.

11. Corporal Baker spoke with both Petitioner's parents and Ms. Shannon Robbins about the incident and had them provide their own statements. Corporal Baker placed Petitioner under arrest and took him and Ms. Shannon Robbins to the magistrate. Corporal Baker charged

Petitioner with assault on a female and the magistrate found probable cause and issued a warrant for arrest.

12. The Domestic Violence Report that Corporal Baker completed notes concerning Shannon Robbins that she was crying, fearful, hysterical, afraid, and nervous. He notes that she complained of pain, bruises and abrasions. He adds “verbal and mental abuse from stress.” Corporal Baker also noted that Shannon Robbins had told him that there was a prior history of domestic violence

13. Corporal Brandon Jenkins with the Nash County Sheriff’s Office testified at the hearing. Corporal Jenkins handles cases involving sex offenders and domestic violence. Corporal Jenkins first spoke to Ms. Shannon Robbins on February 24, 2014, the day after the incident. Corporal Jenkins generally speaks with victims face to face to see if their statements are consistent with the original report which is what he did in this instance. Corporal Jenkins met with Ms. Shannon Robbins at the Sheriff’s office during the work day. Corporal Jenkins has known Petitioner for about 25 years, has worked with him and knew that Petitioner and Ms. Shannon Robbins have had marital problems in the past. Ms. Shannon Robbins recitation of the events with Corporal Jenkins was consistent with what had been reported by Corporal Baker the day before.

14. Corporal Jenkins advised Shannon Robbins that she could obtain ex parte orders. Shannon Robbins told Corporal Jenkins that she did not want to obtain an ex parte order at the time because it would mean Petitioner’s guns would be taken. She specifically stated that she did not want to affect Petitioner’s law enforcement career. Ms. Shannon Robbins knew the charges would already have an effect on Petitioner but she didn’t want to drop the charges because she wanted him to get help and go through mediation. Ms. Shannon Robbins admitted she had been pushed in the past but not to this extent.

15. Corporal Jenkins spoke with Mr. Stanley Robbins as he considered him to be a victim also. Mr. Stanley Robbins told Corporal Jenkins that he pulled Petitioner off Ms. Shannon Robbins and then he and Petitioner tussled. Mr. Stanley Robbins told Corporal Jenkins that Petitioner may be suffering from PTSD and that he thought Petitioner would try to get Shannon to try to drop the charges. Corporal Jenkins prepared a supplemental report following his meetings with Ms. Shannon Robbins and Mr. Stanley Robbins. (Respondent’s Exhibit 6, pp. 28-29)

16. On March 11, 2014, Corporal Jenkins spoke with Ms. Shannon Robbins again and Shannon stated she wanted to drop the charges and Petitioner wanted her to change her statement. Although she was wanting to drop the charges, she was still adamant that she would not change her statement. Shannon stated that she wasn’t sure why Petitioner grabbed her but that he shouldn’t have backed her into the closet to begin with. She specifically asked Corporal Jenkins about “Sheriff’s Training and Standards.”

17. Shannon Robbins testified at the hearing. She has been employed by Nash County Clerk’s Office for four (4) years and has been a clerk in Superior Court for one (1) year. Ms. Shannon Robbins and Petitioner are married and have a two (2) year old son, Simon. At the time of the incident, she and Petitioner were separated and were arguing because she didn’t want Petitioner to take their child and stay away overnight.

18. Ms. Shannon Robbins testimony at the hearing differed significantly from what she told officers at the scene. At the contested case hearing she claims that basically she did not tell either deputy the information they reduced to writing in their reports. From her testimony, it seems that from her days clerking in criminal courts that she had determined that what happened between she and Petitioner did not satisfy the definition of an assault. Her understanding of the definition is erroneous.

19. Shannon Robbins testified that Petitioner backed her into the closet and she stumbled over a vacuum cleaner. This testimony is inconsistent with both her original story to both deputies and pictures from the scene. Photos of the closet show a vacuum cleaner pushed far back into the closet, not in the doorway and not in a fashion that Ms. Shannon Robbins could have tripped over. Shannon Robbins wrote her statement to officers in her own handwriting and signed it. In this statement she did not mention anything about falling over a vacuum cleaner but instead indicated Petitioner pushed her down into the closet.

20. Shannon Robbins stated that Petitioner's certification is very important to their family. By the time this hearing was held, she and Petitioner had been reconciled for over a year. From the outset, she was keenly aware that this incident could affect his certification, repeatedly asking how the AOF might affect his officer's certification. Shannon Robbins asked the DA to drop the charges and was told they wouldn't drop this type of charge and that they had already dismissed one assault charge on Petitioner. The testimony offered at this contested case hearing by Ms. Shannon Robbins is inconsistent with her written statement given to officers at the time of the incident and other credible evidence, and is not believable nor credible.

21. Petitioner's father, Mr. Stanley Craig Robbins, testified at this hearing. He stated that he had prior law enforcement experience with both the NC State Highway Patrol and DMV Motor Enforcement. His testimony was not consistent with other statements and credible evidence at the time of the incident. His testimony is not believable nor credible.

22. Petitioner testified at the hearing. Interestingly, while his family has "circled the wagons" in an effort to try to save his certification, his testimony is not significantly different from what he was stating at the time of the incident.

23. Petitioner was previously employed with Rocky Mount Police Department in 2005 and then with Nash County Sheriff's Office in October 2006. He is married to Ms. Shannon Robbins. On the day of the incident, Petitioner went to his parent's house to pick up his son. When he got in the house his mother approached him about not taking his son and working it out with Ms. Shannon Robbins. He went to the bedroom and his wife was on the other side of the room, across the bed. He and Ms. Shannon Robbins discussed his taking the child, and he told her that he wasn't going to leave with the child. He contends that he told her to let him hold the child while he was there. His mom was coming in and out of the room, talking during this time. Petitioner kept coming closer to Ms. Shannon Robbins and he believes that she backed into the closet to get away from him. Petitioner asked her to go into the closet and she refused. When Ms. Shannon Robbins went down, as a reflex Petitioner went to grab her and his son, he threw his right arm out to keep the weight from being on them. Petitioner knew his father was in the home and he felt his

father grab him after the incident. Petitioner said he felt the arms around him and he backed up until he felt his father, and when his father grabbed him again he twisted around and said that's enough. Petitioner said once he was free, he went to Ms. Shannon Robbins and asked if she was okay. Petitioner then left the room and went outside.

24. Unknown to Petitioner, his mother called 911 even prior to Shannon Robbins falling in the closet.

25. While there is no evidence that Petitioner intended to harm either his wife or child, the credible and believable evidence is that he intentionally grabbed and/or pushed his wife while she was holding the infant child and, as a direct result, his wife fell to the floor of the closet, thus constituting an assault. He is a male above the age of 18 years.

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)(3)(A) states 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:

(3) has committed or been convicted of:

(A) a criminal offense or unlawful act defined in 12 NCAC 09A .0103 as a Class B misdemeanor; or

4. Assault on a female, in violation of N.C.G.S. 14-33(c)(2) constitutes a Class B misdemeanor as defined in 12 NCAC 9A .0103(23)(b) of the Respondent's administrative rules and as set forth in the Class B misdemeanor manual.

5. The actions of Respondent are constitutional, within the statutory authority of the agency, not made upon unlawful procedure, not affected by error of law, supported by substantial evidence and are not arbitrary, capricious or an abuse of discretion.

6. 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).

7. Petitioner has the burden of proof in the case at bar. Overcash v. N.C. Dep't of Env't & Natural Resources, 172 N.C. App. 697, 635 S.E. 2d 442 (2006).

8. Petitioner has failed to meet the burden of proof that he did not commit the criminal offense of assault on a female.

9. A preponderance of the evidence exists to show Petitioner committed the Class B misdemeanor of assault on a female when he pushed his wife into a closet causing her to fall on to the floor of the closet.

10. The undersigned has an extensive history of adjudicating criminal cases in general and domestic violence cases in particular having served eight years as an elected District Court Judge and an additional six years as an Emergency District Court judge. Concluding that Petitioner committed the offense of AOF is enough to satisfy the Commission. Law enforcement officers have a duty to be truthful and honest. The dishonesty of his family in trying to preserve his certification is not held against the Petitioner. The Petitioner has not been completely straight forward and honest in this matter. While that is concerning to the undersigned, that too is not the test for this hearing. The totality of the facts and circumstances in this case are considered in making the recommendation below.

PROPOSAL FOR DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned recommends the Petitioner's certification as a law enforcement officer be issued on a three (3) year probationary period. It is recommended that during the probationary period, should Petitioner be dismissed from any law enforcement department for cause, then that dismissal shall be grounds for revocation of his certification, aside from any statutory and regulatory conditions

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 1st day of February, 2016.

Donald W Overby
Administrative Law Judge