

**STATE OF NORTH CAROLINA
COUNTY OF SCOTLAND**

**IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DOJ 05791**

STEVEN VOYED WARR,

Petitioner,

v.

**NORTH CAROLINA SHERIFFS'
EDUCATION AND TRAINING
STANDARDS COMMISSION,**

Respondent

PROPOSAL FOR DECISION

On December 15, 2015, Administrative Law Judge Melissa Owens Lassiter heard this contested case in Fayetteville, North Carolina, pursuant to N.C.G.S. § 150B-40(e), at Respondent’s request for 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. At the close of all the evidence, Judge Lassiter ruled that Petitioner did not knowingly make a material misrepresentation of information required for justice officer certification to Respondent. On February 9, 2016, Respondent’s counsel filed a proposed Final Decision with the Office of Administrative Hearings in accordance with Judge Lassiter’s Order.

APPEARANCES

For Petitioner: Steven Voyed Warr, *Pro Se*, 805 Trad Street, Laurinburg, North Carolina 28352

For Respondent: Matthew L. Boyatt, Assistant Attorney General, NC 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)

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner: 1 - 2

For Respondent: 1 - 4

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 July 2, 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 Hoke County Sheriff's Office.

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. On or about February 25, 2014, Petitioner completed a Personal History Statement (Form F-3) as part of his original employment application with the Hoke County Sheriff's Office, and in order to obtain certification through the Sheriffs' Commission. (Resp. Ex. 4)

6. Question No. 40 of the Sheriffs' Commission Form F-3 asked the applicant to disclose whether or not he had ever used any illegal drugs, including but not limited to marijuana.

7. Petitioner disclosed in Question No. 40 of the Form F-3 that he had used marijuana once when he was 14 or 15 years old, but that he never used it again because he did not like the way it made him feel. He was "young and in the wrong place at the wrong time and was pressured to try it." (Resp. Ex. 4, p.10)

8. However, Petitioner previously completed a Form F-5A Report of Appointment on September 26, 2006, in furtherance of Petitioner's application for certification through the North Carolina Criminal Justice Education and Training Standards Commission. Question No. 3 of the 2006 Form F-5A asked whether Petitioner had ever used any illegal drugs. Petitioner answered "No," indicating that he had never used any illegal drugs. Petitioner failed to disclose on this 2006 Form F-5A that he had in fact used marijuana on one occasion when he was 14 or 15 years old.

9. At the administrative hearing, Petitioner explained that when he completed the DOC Form F-5A in 2006, he was placed in a room with approximately 30 other applicants for detention officer certification through DOC. All applicants were rushed through the application process. They were required to complete an application, a Form F-5A, and administered a sight test and a drug screen. The Director conducting the application process told Petitioner they were crunched for time. Petitioner explained that the omission on Question No. 3 was a mistake, and not done intentionally or knowingly. Petitioner felt rushed, and made a mistake, but was not trying to conceal anything. Petitioner admitted that he had forgotten about his isolated marijuana use in the haste of completing his DOC paperwork in 2006. He hasn't seen the 2006 Form F-5A since he completed it in 2006.

10. In 2014, in contrast to his completion of the 2006 forms, Petitioner completed the required certification documents at home, taking his time, and proofreading his application several times. He disclosed his one-time marijuana usage on the 2014 Form F-3 Personal History Statement in response to Question 40. (Resp. Ex. 4)

11. Similarly, in 2007, one year after completing the subject 2006 Form, Petitioner disclosed his one-time marijuana usage on the Form F-3, Question 44 (p. 8) for certification with the Criminal Justice Education and Training Standards Commission. In 2011, Petitioner disclosed his one-time marijuana usage in answering Question 39 (p. 11) on Form F-3 for certification with Respondent. (Pet. Exs. 1-2)

12. In 2006, Petitioner received certification from the Criminal Justice Commission, and worked as a detention officer in good standing from 2006 until 2014. Petitioner separated from DOC in good standing, and is seeking employment through the Hoke County Sheriff's Office in order to advance his career.

13. In this case, Petitioner failed to attend the Respondent Commission's Probable Cause Committee (PCC) hearing, because he was waiting for his supervisor to advise him who would attend the probable cause hearing with Petitioner. He claimed lack of oversight at Hoke County Sheriff's Department prevented him from attending the PCC hearing. The Notice of Probable Cause was also mailed to Petitioner's mother's home, and Petitioner doesn't live at that address.

14. Petitioner regrets that he failed to disclose his prior marijuana use and understands now the importance of taking his time on paperwork. Petitioner further understands that it is absolutely necessary to be thorough and complete on all paperwork submitted to the Sheriffs' Commission and/or the North Carolina Criminal Justice Education and Training Standards Commission.

15. Petitioner's failure to disclose his isolated marijuana use at the age of 14 or 15 on the September 26, 2006 Form F-5A arose 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.

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 listed in the Findings of Fact, Petitioner did not make a knowing misrepresentation of information required for certification as he mistakenly omitted disclosure of his one-time marijuana use in completing his September 26, 2006 Form F-5A. 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 his isolated marijuana use as a teen was a mistake, and oversight on Petitioner's part.

PROPOSAL FOR DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned recommends Respondent issue Petitioner's certification as a justice officer.

NOTICE

The North Carolina Sheriffs' Education and Training Standards Commission will make the Final Decision in this contested case. That agency 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).

This the 18th day of February, 2016.

Melissa Owens Lassiter
Administrative Law Judge