

STATE OF NORTH CAROLINA
COUNTY OF SCOTLAND

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DOJ 07443

BRYAN KEITH EPPS)
Petitioner,)
)
v.)
)
NORTH CAROLINA SHERIFFS')
EDUCATION AND TRAINING)
STANDARDS COMMISSION,)
Respondent.)
_____)

PROPOSAL FOR DECISION

On January 12, 2016, Administrative Law Judge Melissa Owens Lassiter heard this case in Fayetteville, North Carolina, pursuant to N.C.G.S. § 150B-40(e) and Respondent's requested designation of an Administrative Law Judge to preside at a contested case hearing under Article 3A, Chapter 150B of the North Carolina General Statutes.

APPEARANCES

For Petitioner: Bryan Keith Epps, Pro Se, 11360 Stewartville Cem Road, Laurinburg, North Carolina 28352

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

ISSUE

Whether Respondent's proposed revocation of Petitioner's justice officer certification is supported by a preponderance of the evidence presented at the administrative hearing?

APPLICABLE RULES

12 NCAC 10B .0204(d)(1)
12 NCAC 10B .0301(a)(8)
12 NCAC 10B .0204(b)(2)

FINDINGS OF FACT

After careful consideration of the witnesses' sworn testimony at hearing, the documents, and exhibits received and admitted into evidence, and the entire record in the proceeding, having weighed all the evidence and assessed the credibility of the witnesses by judging, including, but not limited to the demeanor of the witnesses, 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, the reasonableness of the witnesses' testimony, and whether the testimony is consistent with all other believable evidence in the case, the undersigned finds as follows:

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, and both parties received notice of hearing.

2. By letter dated and mailed via certified mail on September 24, 2015, Respondent notified Petitioner that Respondent had found probable cause to revoke Petitioner's justice officer certification for the following reasons:

a. Committing the Class B misdemeanor offense of "Willful Failure to Discharge Duties" in violation of N.C.G.G. § 14-230 by knowingly and willfully consuming alcohol at the Maxton Police Department while on duty, in full uniform and carrying his weapon, while being subject to responding to calls for service, and in operating his patrol vehicle when he left the Maxton Police Department at the end of his shift.

b. Lacking good moral character required of all justice officers by engaging in the conduct which constituted "Willful Failure to Discharge Duties."

2. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter referred to as "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 .0204(d)(1) provides that the Sheriffs' Commission may revoke the certification of a justice officer when the Commission finds that the officer has committed or been convicted of a Class B misdemeanor which occurred after the justice officer's date of appointment.

4. Petitioner has been certified as a justice officer by Respondent for ten years, and employed as a Deputy with the Robeson County Sheriff's Office and as a patrol officer with Maxton Police Department during that period. Petitioner's duties as Deputy Sheriff include patrolling Robeson County along with nine other deputies on his squad, and responding to calls for various crimes, including domestic relations disputes, breaking and entering, and murders. Beginning in 2009 or 2010, Petitioner began working for the Maxton Police Department every day he was not working as a Deputy Sheriff.

5. On Saturday, January 24, 2015, Petitioner worked at the Maxton Police Department from 6:00 am until 8:00 pm. Since Petitioner was working on weekend duty, he wore his "dress down" uniform consisting of a polo shirt with "Police" written on the shirt, and khaki pants, and carried his duty weapon, and handcuffs. Petitioner responded to a call around 12:15 pm, and returned to the Police Department shortly thereafter.

6. Dispatcher Stephanie Lowry worked with Petitioner for most of the day. Lowry and Petitioner talked in the dispatch office of the police department while on duty. Around 12:30 p.m., Lowry left the police department for approximately ten minutes, then returned with

two bottles of spirituous liquor, Crown Royal Apple, she had bought for an upcoming beach trip with friends. While working, Lowry drank one mixed drink consisting of Sprite and Crown Royal Apple. Petitioner drank part, but not all, of one alcoholic beverage from a white Styrofoam cup, while on duty. After drinking part of his drink, Petitioner realized he had made a bad mistake, and stopped drinking his alcoholic beverage. Petitioner did not check out of duty before he drank the mixed beverage, and did not respond to any police calls during or after he drank the mixed drink.

7. Around 6:00 pm, Officer Patrick Hunt responded to a call regarding a trespassing at Walgreens, while Petitioner stayed in the office. Dispatcher James Knight relieved Dispatcher Lowry from duty, and Lowry left work around 7:00 pm. Petitioner worked in the dispatch, talking with Knight until his shift was over at 8:00 pm. Petitioner drove his police-assigned vehicle home.

8. On Thursday, January 29, 2015, Maxton Police Chief Tammy Deese and Captain Jamie Oxendine reviewed the Maxton Police department's surveillance cameras of the past week's activities. They observed Dispatcher Lowry and Petitioner possibly drinking alcohol in white Styrofoam cups while working on January 24, 2015. Part of the video showed Lowry and Petitioner removing a bottle of what appeared to be spirituous liquor from a bag while standing in the dispatch office. Both Lowry and Petitioner admitted to drinking alcohol while on duty on January 24, 2015. Petitioner admitted he was wrong for consuming alcohol while on duty on January 24, 2015, and said he was sorry for what he had done. (Resp. Exh. 5) Chief Deese suspended Petitioner from working at Maxton Police Department until July 1, 2015.

9. The Robeson County Sheriff's Office investigated Petitioner's January 24, 2015 on-duty actions at the Maxton Police Department. Petitioner admitted to drinking alcohol while on-duty at the Maxton Police Department on January 24, 2015. Internal Affairs Investigator Randall Graham found that Petitioner was forthright in admitting his wrongdoing, and made no excuses for his action. There was no indication that Petitioner was intoxicated while on-duty on January 24, 2015, or that Petitioner drove a vehicle while under the influence of alcohol. Petitioner remained inside the Maxton Police Department for the duration of his January 24, 2015 shift, and had no contact with the public. Graham found that Petitioner did not blame any individual other than himself for his actions, and understood that he would have to deal with the consequences of his actions. (Resp. Exh. 3) The Robeson County Sheriff suspended Petitioner for one day without pay in disciplining Petitioner for his actions. In disciplining Petitioner, the Sheriff considered Petitioner's 5-month suspension from the Maxton Police Department.

10. At hearing, Investigator Graham opined that other than the January 24, 2015 incident, Petitioner had no prior incidents or complaints while employed as a Deputy Sheriff. Petitioner is currently employed full-time as Robeson County Deputy Sheriff. Graham described Petitioner as an exemplary and seasoned police officer. Graham further explained that the Robeson County Sheriff felt a one-day suspension from the Sheriff's Office, along with the five-month suspension by the Maxton Police Department, was sufficient punishment for Petitioner's January 24, 2015 actions of drinking alcohol while on duty.

11. At the contested case hearing, Petitioner admitted to drinking alcohol while on duty at the Maxton Police Department on January 24, 2015. Petitioner acknowledged that he was wrong, and expressed remorse for his actions. He felt he had disgraced himself, and let down his

Sheriff, the Robeson County Sheriff's Department, the Maxton Police Department, and his family. He acknowledged that his actions on January 24, 2015 were solely his fault, and understood that he must suffer the consequences of his actions. Petitioner is married, has two daughters, and wants to continue his law enforcement career and support his family. He asked that he receive a five-year probation, instead of a revocation of his certification.

12. Petitioner's certification is subject to denial pursuant to 12 NCAC 10B .0204 (d)(1) for committing the Class B misdemeanor offense of "Willful Failure to Discharge Duties" in violation of N.C.G.S. § 14-230 by knowingly and willfully consuming alcohol while on duty at the Maxton Police Department.

13. Having accepted responsibility for his actions, and sincerely expressed remorse for his actions, Petitioner poses no risk of repeating the January 24, 2015 on-duty action of drinking alcohol on duty. Petitioner's drinking alcohol while on duty was uncharacteristic of Petitioner, and was one bad choice on one particular day.

14. Pursuant to 12 NCAC 10B .0205(2)(g), Respondent has the discretion to issue a lesser sanction than revocation of Petitioner's justice officer certification where extenuating circumstances presented at the administrative hearing warrant such a reduction or suspension.

15. Petitioner submitted ten (10) letters from local law enforcement personnel who have known and worked with Petitioner for 8 to 10 years, and who show tremendous support for Petitioner keeping his justice officer certification. Maxton Police Chief Reese explained that Petitioner "always displayed a very professional demeanor with the public and the officers" that he interacts with on a day-to-day basis. She noted that she has had no other problems with Petitioner's work with her department other than his January 24, 2015 actions. His "integrity has been unquestionable in the community." (Pet. Exh 1)

16. Robeson County Sheriff Kenneth Sealey described how Petitioner has performed his duties as a field training officer well, is greatly respected by officers, and is a very dependable worker. Sealey would greatly appreciate Respondent allowing Petitioner to continue his law enforcement career, and save his certification. (Pet. Exh 1)

17. Robeson County Sheriff's Captain Brenda Thomas asked Respondent to place Petitioner on probation for his actions at Maxton Police Department on January 24, 2015. Thomas has the utmost respect for the excellent service Petitioner has provided as a Deputy Sheriff. Robeson County Sheriff's Major Howard Branch asked that Respondent not allow Petitioner's one mistake to interrupt Petitioner's previous stellar career. Branch explained that Petitioner has been an excellent role model and mentor for new deputies, is a reliable, efficient, and very good worker who exhibits a positive attitude. (Pet. Exh 1)

18. Robeson County Sheriff's Sgt. Lewis Woodard has worked and known Petitioner for 8 years. Woodard has always found Petitioner to be a hardworking, conscientious deputy. Woodard described how Petitioner always sets a good example to younger deputies on how to show respect to everyone, even when making an arrest. Petitioner "naturally displays the traits

that I look for; traits that more often than not, have to be learned with years of on-the-job experience.” (Pet. Exh 1)

19. Four other law enforcement officers expressed strong support for Petitioner maintaining his justice officer certification. These officers explained how Petitioner has turned one of the greatest challenges Petitioner has had to face, i.e. dealing with the professional consequences from drinking alcohol while on duty, into one of the greatest lessons of his professional and personal life. They opined that Petitioner is an exemplary asset to his employers, whose career should not be terminated for making one bad choice. (Pet. Exh. 1)

CONCLUSIONS OF LAW

1. The parties are properly before the Office of Administrative Hearings.
2. 12 NCAC 10B .0204(d)(1) provides that the Sheriffs’ Commission may revoke the certification of a justice officer when the Commission finds that the officer has committed or been convicted of a Class B misdemeanor which occurred after the justice officer’s date of appointment. N.C. Gen. Stat. §14-230 is listed as a Class B misdemeanor in Respondent’s Class B misdemeanor manual.
3. The evidence presented at the administrative hearing showed that Petitioner committed the Class B misdemeanor offense of “Willful Failure to Discharge Duties,” in violation of N.C.G.S. § 14-230, by knowingly and willfully consuming alcohol at the Maxton Police Department while on duty on January 24, 2015, in full uniform and carrying his weapon, while being subject to responding to calls for service, and in operating his patrol vehicle when he left the Maxton Police Department at the end of his shift.
4. However, pursuant to 12 NCAC 10B .0205(2)(g), Respondent may either reduce or suspend the period of sanction under this rule, or substitute a period of probation in lieu of revocation or denial of certification, after extenuating circumstances brought out at the administrative hearing warrant such a reduction.
5. 12 NCAC 10B .0301(a)(8) requires that every justice officer employed or certified in North Carolina shall be of good moral character.
6. In this case, Petitioner has demonstrated that he possesses the good moral character required of a criminal justice officer. Shortly after drinking some alcohol on duty on January 24, 2015, Petitioner realized his wrongdoing, and the gravity of his actions. He did not respond to any police calls while on duty. While Petitioner’s actions were reprehensible, and inexcusable, there is no indication that Petitioner will engage in such behavior in the future. Petitioner’s actions of drinking part of one cup of Sprite and spirituous liquor, while on duty at Maxton Police Department, was a one-time bad choice that Petitioner made on one day at work. Petitioner acknowledged that he drank alcohol while on duty, expressed remorse for his actions, and showed that he turned a bad choice into a learning opportunity both professionally and personally.

7. The overwhelming evidence from ten law enforcement officers, such as Petitioner's immediate supervisors, and the Robeson County Sheriff, and the Maxton Police Chief, demonstrated that Petitioner is an exemplary police officer, role model for younger deputies, and asset to his employer law enforcement departments.

PROPOSAL FOR DECISION

Based upon the foregoing Findings Of Fact and Conclusions Of Law, the undersigned recommends Respondent place Petitioner's law enforcement certification on probationary status for five years, given the extenuating circumstances brought out at the administrative hearing.

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 2nd day of February, 2016.

Melissa Owens Lassiter
Administrative Law Judge