

STATE OF NORTH CAROLINA
COUNTY OF CABARRUS

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DOJ 07802

JAMES WILLIAM BANKS PETITIONER, V. N C SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION RESPONDENT.	PROPOSAL FOR DECISION
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On February 2, 2016, Administrative Law Judge Selina M. Brooks heard this case in Charlotte, North Carolina. This case was heard after Respondent requested, pursuant to N.C.G.S. § 150B-40(e), the 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: James William Banks, Pro Se
2033 Moss Creek Drive
Harrisburg, North Carolina 28075

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

ISSUE

Is Respondent's proposed denial of Petitioner's application for certification for Petitioner knowingly making a material misrepresentation of any information required for certification as a justice officer to the North Carolina Sheriffs' Education and Training Standards Commission supported by a preponderance of the evidence presented at the hearing?

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 that the Petitioner received by mail the proposed Denial of Justice Officer's Certification letter, mailed by Respondent North Carolina Sheriffs' Education and Training Standards Commission on September 24, 2015. (Respondent's Exhibit 1)

2. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter referred to as the "Commission" or "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(c)(1) and (2) provides 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.

4. Petitioner is an applicant for detention officer certification through the Cabarrus County Sheriff's Office. Petitioner has been employed by the Cabarrus County Sheriff since August 2014.

5. Petitioner moved from Ohio to North Carolina in the year 2000. Petitioner graduated high school in 1992 and has since earned a Masters of Divinity from Hood Theological Seminary. Petitioner would like to work as a detention officer until such time as he is able to become a full time pastor.

6. Petitioner has held employment as a duly licensed barber. Petitioner obtained his barber's license from the State of Ohio in 1995. Petitioner also obtained his barber's license from the State of North Carolina in 2000 and from the State of Georgia in 2014.

7. Petitioner testified that in 2013 he returned from private contract employment in Kuwait where he was servicing heavy equipment for the military. Petitioner returned to North Carolina and was collecting unemployment. When Petitioner's unemployment ran out, Petitioner decided he would work as a barber in the State of Georgia in order to save money to purchase a vehicle. Petitioner obtained a Georgia barber's license in April 2014, and was working as a barber in Georgia. In addition, Petitioner applied for and obtained a Georgia driver's license. Petitioner represented to the State of Georgia that he was in fact a resident of that state.

8. In addition to the foregoing, Petitioner entered into a sales contract for the purchase of a motor vehicle in the State of Georgia. Petitioner obtained financing through Wells Fargo. (Respondent's Exhibit 7) Petitioner represented in that sales contract that he resided in Marietta Georgia. Petitioner testified that he would travel back to North Carolina on weekends and that he was in Georgia for less than 7 months.

9. Petitioner completed an F-3 Personal History Statement on August 11, 2014, in furtherance of his application for certification through the Sheriffs' Commission. Petitioner signed the Personal History Statement before a notary, attesting that the information provided on the form was true and complete. Petitioner was cautioned that any omissions or false information on the F-3 could result in disqualification.

10. Question No. 13 of the August 2014 Personal History Statement asked Petitioner to disclose all addresses for the past 10 years. (Respondent's Exhibit 3, p.3) Petitioner failed to disclose that he had been living in the State of Georgia the same year Petitioner completed the F-3 Personal History Statement. Petitioner's explanation that he felt he did not need to disclose this information because he was not in Georgia long enough is not credible, especially in light of the fact that Petitioner had obtained a Georgia driver's license and had also purchased a vehicle in Georgia, listing his home address in Marietta, Georgia. Petitioner's failure to disclose that he was living in Georgia constitutes a material misrepresentation within the meaning of 12 NCAC 10B .0204 (c)(1).

11. Further, Question No. 27 of the August 2014 Personal History Statement asked Petitioner to disclose all licenses he has held from any licensing board, whether in or out of the State of North Carolina. (Respondent's Exhibit 3, p.6) Petitioner failed to disclose that he held licenses to be a barber in the State of Ohio, North Carolina, and Georgia. Petitioner subsequently amended his F-3 Personal History Statement and disclosed that he held a barber's license in Ohio and North Carolina. (Respondent's Exhibit 4, p.6) However, Petitioner failed to disclose that he had obtained a barber's license from the State of Georgia in April 2014, just 4 months prior to completing the Personal History Statement. Petitioner claims that he must have been rushing when he completed the F-3 Personal History Statement. Petitioner's testimony is not credible in light of the fact that Petitioner amended the F-3 Personal History Statement and continued to withhold information. Petitioner's intentional failure to disclose his Georgia barber's license constitutes a material misrepresentation within the meaning of 12 NCAC 10B .0204 (c)(1).

12. Also of note is the fact that Petitioner failed to disclose on his August 2014 Personal History that he had obtained a Georgia driver's license. Question No. 51 of the Personal History Statement asked Petitioner to list all driver's licenses he has possessed. Petitioner disclosed that he had been licensed in Ohio and Pennsylvania; however, Petitioner failed to disclose that in 2014 he obtained a driver's license from the State of Georgia. In addition, when asked on Question No. 29 of the August 2014 Personal History Statement to list prior employment for the past 10 years, Petitioner failed to disclose that in 2014 Petitioner was working as a licensed barber in the State of Georgia. (Respondent's Exhibit 3, p.6-8). Petitioner testified that he was only in Georgia for a few months, and that he therefore did not believe he had to disclose this information on the Personal History Statement. However, the F-3 asks applicants to provide all work history for the last 10 years and to list all out of state driver's licenses. Petitioner's explanation is not credible regarding these additional omissions. Petitioner's failure to disclose his Georgia employment as a barber and his State of Georgia driver's license constitutes additional material misrepresentations within the meaning of 12 NCAC 10B .0204 (c)(1).

13. Finally, Petitioner made additional misrepresentations regarding prior drug use. On his August 2014 Personal History Statement, Petitioner was asked in Question No. 40 whether he

had ever used any illegal drugs. Petitioner responded that he had never used any illegal drugs. (Respondent's Exhibit 3, p. 10) Petitioner later amended this statement and provided that he used marijuana "one" time. (Respondent's Exhibit 4, p.10) However, in a previous F-3 Personal History Statement Petitioner completed on October 5, 2005, in furtherance of employment through the Mecklenburg County Sheriff's Office, Petitioner disclosed that he had used marijuana on more than one occasion. (Respondent's Exhibit 6, p.10) Petitioner testified that he must have pushed this out of his mind when he completed his 2014 Personal History Statement through Cabarrus County. Petitioner's explanation is not believable. The record establishes a clear pattern of Petitioner intentionally withholding information in various forms submitted to the Respondent Commission. Petitioner's failure to fully disclose his prior drug use constitutes a material misrepresentation within the meaning of 12 NCAC 10B .0204 (c)(1).

14. A preponderance of the evidence presented at the administrative hearing establishes that Petitioner's application for certification is subject to denial pursuant to 12 NCAC 10B .0204(c)(1) based on Petitioner's numerous material misrepresentations on various forms submitted to the Commission, as set out in greater detail above.

CONCLUSIONS OF LAW

1. The parties are properly 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 set out above, Petitioner did make knowing, material misrepresentations of information required for certification on his August 11, 2104, Personal History Statement and on subsequent amendments to that statement. Petitioner failed to fully disclose his past marijuana use. Further, Petitioner concealed that he had obtained a Georgia driver's license in 2014 and that he had also obtained a Georgia barber's license and had been living and working in the State of Georgia.

4. Pursuant to 12 NCAC 10B .0205, Petitioner's application for certification is subject to denial for a period of five (5) years based on Petitioner's material misrepresentations of information required to be disclosed to the Commission on the August 11, 2014, Personal History Statement.

5. The Petitioner has the burden of proof in this matter. The Petitioner has failed to show by a preponderance of the evidence that the Respondent Commission improperly proposed to deny Petitioner's application for certification.

PROPOSAL FOR DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law and pursuant to 12 NCAC 10B .0205, the undersigned recommends Respondent deny Petitioner's application for certification for a period of five (5) years based on Petitioner's material misrepresentations on forms submitted to the Commission.

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 22nd day of March, 2016.

Selina M Brooks
Administrative Law Judge