

STATE OF NORTH CAROLINA
COUNTY OF PITT

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
16 DOJ 00471

<p>William Thomas Warren Petitioner,</p> <p>v.</p> <p>North Carolina Criminal Justice Education and Training Standards Commission Respondent.</p>	<p>PROPOSAL FOR DECISION</p>
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THE ABOVE-ENTITLED MATTER was heard before the undersigned Augustus B. Elkins II, Administrative Law Judge, in Halifax, North Carolina. This case was heard pursuant to N.C.G.S. § 150B-40, 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. The record was left open for the parties' submission of further materials, including but not limited to supporting briefs, memorandums of law and proposals.

The Respondent filed proposals and argument to the Office of Administrative Hearings on June 15, 2016 which was received by the Undersigned on June 20, 2016. The record was held open for submission by Petitioner for an additional 15 business days, and receiving no further proposal or other materials the record was closed on July 11, 2016.

APPEARANCES

Petitioner: William Thomas Warren
Post Office Box 341
Stokes, North Carolina 27884

Respondent: Whitney Hendrix Belich
Attorney for Respondent
Department of Justice
Law Enforcement Liaison Section
9001 Mail Service Center
Raleigh, North Carolina 27699-9001

ISSUE

Does substantial evidence exist for Respondent to deny Petitioner's law enforcement officer certification as a result of a failure to list "Smoking marijuana in high school with Mr. Taylor and Ms. Brown," and a failure to list "Using cocaine with Mr. Taylor and Mr. Hamill on August 23, 2008," on various official forms as set forth in Respondent's December 4, 2015 letter to Petitioner proposing denial of law enforcement officer certification.

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 fact. In making the below 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, both parties received notice of hearing, and 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").
2. Respondent, North Carolina Criminal Justice Education and Training Standards Commission, has the authority granted under the North Carolina General Statutes and the North Carolina Administrative Code to certify law enforcement officers and to revoke, suspend, or deny such certification.
3. Petitioner is an applicant seeking certification with Respondent as a full-time law enforcement officer. He has held no previous certifications.
4. Petitioner completed a Personal History Statement Form (Form F-3) and Mandated Background Investigation Form (Form F-8) (hereinafter "Forms") requesting certification by Respondent.
5. Petitioner gave the following responses to the questions on Respondent's Forms:

<p>Plymouth PD Personal History Statement Form F-3 notarized 6/19/15, Q46, stated in part “Have you ever used, to include, tasting, any illegal drugs including but not limited to, marijuana, steroids, opiates, pills, heroin, cocaine, crack, LSD, designer or synthetic drugs, etc, to include even-one time use or experimentation?”</p>	<p>A46: Marked “No”</p>
<p>Plymouth PD Personal History Statement Form F-3 notarized 6/19/15, Q48, stated in part “Have you ever purchased, possessed, manufactured, grown, delivered, or sold any amount of illegal drugs for which you did not have a valid prescription?”</p>	<p>A48: Marked “I don’t know” Listed: 1. I was leaving high school when a few people who I thought were friends asked for a ride home and I said yes. As we were leaving school, the school resource officer stopped us and asked me to get out of the truck. She asked if there was anything illegal in the truck that she needed to know about. I told her no and when she asked to search the truck, I told her she could. One the people left in the truck put a marijuana joint in the glove box. No one took possession of the marijuana, she we all was charged with possession of marijuana up to ½ oz. I got the case dismissed by the court with a 90-96.</p>
<p>Plymouth PD Mandated Background Investigation Form F-8 dated 7/9/15, Q32 “Describe any criminal involvement that you have had in the past.”</p>	<p>A32: Responded with: “In high school, when I was 16 a friend asked for a ride home. When leaving the parking lot the resource officer stopped to search the truck. My former friend had placed a marijuana joint in my glove box. Since he did not take ownership of it we were both charged”</p>
<p>Plymouth PD Mandated Background Investigation Form F-8 dated 7/9/15, Q34, stated in part, “Have you ever committed an illegal act since turning the age of 16?”</p>	<p>A34: Responded with “*question number 32”</p>
<p>Plymouth PD Mandated Background Investigation Form F-8 dated 7/9/15, Q36 “How many times have you stood by and observed someone else take part in criminal activity?”</p>	<p>A36: Responded with “None”</p>

Plymouth PD Mandated Background Investigation Form F-8 dated 7/9/15, Q49 “Explain your knowledge or involvement regarding illegal drugs.”	A49: Responded with “Besides the incident when I was 16, none”
Plymouth PD Mandated Background Investigation Form F-8 dated 7/9/15, Q50, stated, “Have you ever possessed or sold any amount of illegal drugs? When?”	A50: Responded with “No
Plymouth PD Mandated Background Investigation Form F-8 dated 7/9/15, Q50, also stated, “Have you ever used any of the following drugs?”	A50: Marked “Opiates” Listed: 1. For surgery that was prescribed by a doctor
Plymouth PD Mandated Background Investigation Form F-8 dated 7/9/15, Q51, “Have you ever tasted or sniffed any of these drugs”	A51: Responded with “No”
Plymouth PD Mandated Background Investigation Form F-8 dated 7/9/15, Q53, “Describe any social functions that you may have attended that illegal drugs were present?”	A53: Responded with “None”
Plymouth PD Mandated Background Investigation Form F-8 dated 7/9/15, Q54, “When was the last time you were in the presence of these drugs?”	A54: Responded with “Never”

6. During the processing of Petitioner’s application, Respondent received incident reports related to past charges involving Petitioner. In reviewing these reports, Judy Kelley, investigator for Respondent, noticed several mentions of possible drug use and/or possession by Petitioner.

7. Investigator Kelley testified at the hearing. During her investigation, Investigator Kelley telephonically interviewed several persons regarding the incident in 2008, where incident reports indicated Petitioner and several friends were caught by police on a property where they were not permitted to be. During that incident, police reports indicate that “juveniles were on the property using cocaine.” One of the juveniles identified by the officer on the scene was Petitioner. Friends of Petitioner during this time period, including Daniel Taylor, told Investigator Kelley that Petitioner had used drugs frequently during this time including “smoking weed” and using cocaine.

8. Petitioner was also charged in a separate incident with Possession of Marijuana up to ½ oz. in which police reports indicated marijuana was found in the car Petitioner was driving.

A few friends had asked for a ride home from school and as Petitioner was leaving school, the school resource officer stopped his truck. He agreed for her to search when the “joint” was found. No one stated it belonged to them and everyone was charged. Petitioner’s case was dismissed.

9. When asked about the above incidents, Petitioner gave a statement to Respondent stating that in both incidents, the drugs belonged to someone else and maintaining that he had not used cocaine or marijuana.

10. Petitioner testified at the hearing. He maintained that he has never used drugs. He did state he has observed or been present at social functions where illegal drugs were used. In one instance he knew of the use after the fact. Petitioner maintained that he did not think of them when providing answers to those questions.

11. Petitioner’s mother, Paula Warren, testified at the hearing. Mrs. Warren testified that she was certain that her son had never done drugs and that she had never caught him with drugs or using drugs. Ms. Warren had the opportunity to observe Petitioner almost around the clock for quite some time. When he was approximately sixteen years old, a cyst was discovered on Petitioner’s spinal cord requiring surgery and his being out of school for a year or two. During that time, he had to learn to walk again and did not leave the house. Further, even when able to go back to school and do other activities, Petitioner did not spend the night at other homes. The Undersigned finds Ms. Warren to be a highly credible witness.

12. Mr. Taylor, a former friend of Petitioner and participant in the incident in 2008 which involved cocaine, testified at the hearing. He stated that all previous statements regarding Petitioner using marijuana or cocaine were untrue. Despite previous statements to Investigator Kelley that he had observed Petitioner smoke marijuana regularly in the past and that he observed Petitioner “doing lines” of cocaine, Mr. Taylor testified at this hearing that he had lied to Investigator Kelley and that he had never seen Petitioner use or possess illegal drugs. Mr. Taylor testified that he was angry at Petitioner because he believed he was the reason the police were called during the 2008 incident.

BASED UPON the foregoing Findings of Fact, the Undersigned makes the following Conclusions of Law.

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)(6) states that 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:

(6) has knowingly made a material misrepresentation of any information required for certification or accreditation;

4. Ms. Kelley's investigation and the assertion that Petitioner's failed to list smoking marijuana and using cocaine on Respondent's forms are dependent on statements from Daniel Taylor. Mr. Taylor testified under oath to the Undersigned that he has never seen Petitioner "do drugs" of any kind. Mr. Taylor confessed that all previous statements and interviews leading to Respondent finding that Petitioner failed to list "Smoking marijuana in high school with Mr. Taylor and Ms. Brown," and failed to list "Using cocaine with Mr. Taylor and Mr. Hamill on August 23, 2008," on various official forms were not true.

5. The findings of the Probable Cause Committee of the Respondent, through no fault of their own, are not supported by substantial evidence.

BASED UPON the foregoing Findings of Fact and Conclusions of Law the Undersigned makes the following Proposal for Decision.

PROPOSAL FOR DECISION

The Undersigned finds and holds that there is sufficient evidence in the record to properly and lawfully support the Conclusions of Law cited above.

Based on those conclusions and the totality of all evidence, including testimony and exhibits provided at the above-captioned case, the Undersigned holds that the evidence does not support a probable cause that Petitioner misrepresented information on Respondent's forms when he failed to list smoking marijuana in high school or using cocaine in 2008. The Undersigned holds that the Petitioner's request for law enforcement certification should be allowed.

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.

A copy of the final agency decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency and a

copy shall be furnished to his attorney of record. It is requested that the agency furnish a copy to the Office of Administrative Hearings.

IT IS SO ORDERED.

This the 25th day of August, 2016.

Augustus B Elkins II
Administrative Law Judge