

STATE OF NORTH CAROLINA
COUNTY OF GASTON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
16 DOJ 01395

<p>David Dwayne Lancaster 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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This case came on for hearing on September 6, 2016, before Administrative Law Judge Selina M. Brooks in Charlotte, 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: David Dwayne Lancaster, pro se
216 Meadowbrook Circle
Dallas, North Carolina 28034

Respondent: Lauren Tally Earnhardt
Attorney for Respondent
Department of Justice
Law Enforcement Liaison Section
9001 Mail Service Center
Raleigh, North Carolina 27699-9001

ISSUES

Does substantial evidence exist for Respondent to suspend Petitioner's law enforcement officer certification for knowingly making a material misrepresentation?

RULES AT ISSUE

12 NCAC 09A .0204(b)(6)
12 NCAC 09A .0205(b)(4)

WITNESSES

David Wayne Lancaster, Petitioner
Michelle Schilling, an investigator with Respondent
Sergeant Jason Bradley Davis, Belmont Police Department
Trooper Frank Edward O'Dell, North Carolina State Highway Patrol

EXHIBITS ADMITTED INTO EVIDENCE

Petitioner's Exhibit 1
Respondent's Exhibits 1 through 4

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. In the absence of a transcript, the Undersigned has referred to her notes to refresh her recollection.

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 certified mail, the proposed suspension letter, mailed by Respondent, the North Carolina Criminal Justice Education and Training Standards Commission (hereinafter "The Commission"), on January 4, 2016. (Respondent's Exhibit 2)

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. Petitioner was awarded probationary law enforcement officer certification by the Respondent on April 28, 2000, and received his general law enforcement officer certification on April 28, 2001. (Respondent's Exhibit 1)

4. On October 23, 2014, Respondent received documentation from the Belmont Police Department stating that Petitioner failed to provide his periods of military service and disciplinary action on his Personal History Statement (Form F-3). (Respondent's Exhibit 1)

5. Petitioner completed and signed the Personal History Statement (Form F-3) for Belmont Police Department. Petitioner's Form F-3 was signed before a notary public on January 12, 2000. (Respondent Exhibit 1)

6. On Petitioner's January 12, 2000, Form F-3, in response to question #32, "Were you ever in the U.S. Military Service or other military organization?" Petitioner marked "No". A review of Petitioner's U.S. Army Certificate of Release or Discharge from Active Duty (Form DD214) showed that Petitioner failed to list that he had served in the U.S. Army between July 9, 1991 to October 24, 1991 and between February 6, 1995 to March 12, 1996. (Respondent's Exhibit 1)

7. On March 15, 2015, Respondent received a statement from Petitioner which was dated October 31, 2014. Petitioner admitted in his statement that he checked "no" to question # 32 on the F-3 because he never completed training, was never assigned to an active duty unit, and his discharge was listed as uncharacteristic. Petitioner also admitted in his statement that "if [he] were today was to fill out the F3 [he] would have filled out and answered the questions appropriately." (Respondent's Exhibit 1)

8. Petitioner completed Basic Law Enforcement training in February 1999 and worked for Belmont Police Department from May 2000 until he was terminated on May 18, 2015. (Respondent's Exhibit 1)

9. Petitioner graduated high school and enlisted into the United States Army in 1991, departing for basic training on July 9, 1991. Upon enlisting into the U.S. Army and prior to departing for basic training, Petitioner was required to sign enlistment contract and take an oath twice. After completing basic training in Fort Benning, Georgia, Petitioner started his Advanced Individual Training (AIT) which trains him for the position he would be working in for the U.S. Army, which was also at Fort Benning. While at AIT, Petitioner was informed of issues that were going on at home between his grandmother who raised him and his father. Petitioner submitted a request for separation, obtained the approval from at least two or three members of his command, signed separation paperwork, and was released from active duty. Petitioner's separation was listed as an "uncharacteristic discharge." Petitioner understood that if he just went home instead of going through the process of being released he would be considered Absent Without Leave (AWOL).

10. In 1995, Petitioner obtained a waiver from the U.S. Army and reenlisted. Petitioner again signed an enlistment contract and took an oath upon enlisting and again upon departing for training. Petitioner completed his basic training, AIT, and was approximately two (2) weeks into a three-week jump school when Petitioner and his senior drill sergeant had a confrontation. As a result of his insubordination, Petitioner was called to the program's 1st Sergeant's office and was dropped from the jump school program. Petitioner packed his belongings, went AWOL, and returned home to North Carolina in May 1995. Petitioner remained absent from his unit until he was picked up by Mount Holley Police Department officers and returned to the U.S. Army on or

about December 21, 1995. Petitioner was permitted an “entry level separation in lieu of trial by courts-martial” and was released from active duty. Petitioner testified that he thought he would receive a dishonorable discharge at this point.

11. Petitioner is embarrassed that he went AWOL from the U.S. Army and that he made a mistake by not answering the questions correctly on the Form F-3. As a result of the investigation by Respondent, Petitioner became depressed, was taking anti-depression medication and in January 2015 was cited for DWI.

12. Sergeant Davis has known Petitioner for approximately 15 years. He and Petitioner worked together at Belmont Police Department for 10 years and Sgt. Davis supervised Petitioner two (2) separate times during his employment. Sgt. Davis didn't know about Petitioner's military service and up until this incident considered Petitioner to be completely honest and trustworthy. Sgt. Davis knew that Petitioner became depressed and withdrawn during the time since the Respondent started its investigation but has since received medical and mental health treatment and is in a better condition.

13. Trooper O'Dell has known Petitioner for 30 years but has only been close friends since Petitioner became a law enforcement officer. Trooper O'Dell encouraged Petitioner to join the military because he felt Petitioner possessed the character traits for military service. Trooper O'Dell is also a member of the National Guard and when he was unable to go on deployment in January 2016, Petitioner took his place. Trooper O'Dell explained that until this incident, Petitioner's integrity has never been questioned.

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 has knowingly made a material misrepresentation of any information required for certification or accreditation.

4. 12 NCAC 09A .0205(b)(4) states that when the North Carolina Criminal Justice Education and Training Standards 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.

5. The findings of the Probable Cause Committee of the Respondent are supported by substantial evidence and are not arbitrary and capricious.

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 Res.*, 179 N.A. App. 697, 635 S.E.2d. 442 disc. rev denied, 361 N.C. 220, 642 S.E.2d 445 (2007).

8. Petitioner has failed to meet the burden of proof. Petitioner has failed to show by a preponderance of the evidence that Respondent's proposed suspension of Petitioner's law enforcement officer certification is not supported by substantial evidence. Petitioner has failed to show that he did not make a material misrepresentation on his Personal History Statement (Form F-3) which is required for certification.

9. Petitioner knowingly made a material misrepresentation on his January 12, 2000 Form F-3 when he marked "No" in response to question #32, "Were you ever in the U.S. Military Service or other military organization?" when the evidence shows he was actually in the military in 1991 and again in 1995.

DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, it is proposed that Petitioner's law enforcement certification be suspended for a period of five (5) years for knowingly making material misrepresentations.

NOTICE AND ORDER

The North Carolina Criminal Justice Education and Training Standards Commission is the agency that will make the Final Decision in this contested case. As the final decision-maker, 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 pursuant to N.C. Gen. Stat. § 150B-40(e).

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714.

This the 21st day of October, 2016.

Selina Malherbe Brooks
Administrative Law Judge