

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
16 DOJ 02147

<p>Christopher Scott Shepherd Petitioner,</p> <p>v.</p> <p>NC Sheriffs' Education And Training Standards Commission Respondent.</p>	<p>PROPOSAL FOR DECISION</p>
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On July 7, 2016, Administrative Law Judge David F. Sutton heard this case in Waynesville, North Carolina. This case was heard after Respondent requested, pursuant to N.C. Gen. Stat. § 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

For Petitioner:
Pro se

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

ISSUES

Is Respondent's proposed denial of Petitioner's application for justice officer certification based upon Petitioner's failure to meet or maintain the minimum employment standards that every justice officer shall be of good moral character supported by a preponderance of the evidence?

Is Respondent's proposed denial of Petitioner's application for justice officer certification based upon Petitioner's commission of the Class B misdemeanor offense of willfully failing to discharge duties supported by a preponderance of the evidence?

APPLICABLE LAW

N.C. Gen. Stat. §§ 14-230
12 NCAC 10B .0103, .0204, .0205, .0300, & .0301

EXHIBITS ADMITTED INTO EVIDENCE

Respondent's Exhibits 1 – 8.

WITNESSES

For Respondent:

Petitioner
Sheriff Chris Francis

For Petitioner:

Petitioner
Amber Shepherd

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 makes the following Findings of Fact. In making the Findings of Fact, the Undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness, any interest, 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 relied upon his notes to refresh his recollection.

Wherefore, the Undersigned makes the following Findings of Fact, Conclusions of Law and Proposed Decision.

FINDINGS OF FACT

1. Petitioner is a former police officer who is now applying for certification through the North Carolina Sheriffs' Education and Training Standards Commission (hereinafter the "Sheriffs' Commission"). Petitioner previously held law enforcement officer certification through the North Carolina Criminal Justice Education and Training Standards Commission. (Respondent's Exhibit 2)

2. Petitioner previously worked as a police officer with the Lake Lure Police Department (hereinafter "Lake Lure PD"). Petitioner was given the option to resign or be terminated from Lake Lure PD in 2009, based upon Petitioner's pattern of inappropriate conduct while on duty, as set out in greater detail below. Petitioner chose to resign from Lake Lure PD. Petitioner then obtained employment as an officer at the Spindale Police Department (hereinafter

“Spindale PD”). Petitioner again engaged in a pattern of inappropriate conduct while at Spindale PD, as set out in greater detail below. Petitioner resigned from Spindale PD in 2011.

3. Petitioner has not been employed by a law enforcement agency since his departure from Spindale PD in 2011. Although Petitioner is currently an applicant for certification through the Sheriffs’ Commission, Petitioner has never worked for a Sheriff’s Office. Petitioner did not offer testimony from a Sheriff’s Office or any other law enforcement agency in support of Petitioner’s attempt to obtain certification.

4. Since leaving law enforcement in 2011, Petitioner has remained employed at various jobs. Petitioner has held the following employment since resigning from Spindale PD: 1) Childer’s Truck Stop; 2) Murphy USA; 3) Spirit Construction; 4) Zack King Construction; 5) Southern Building and Maintenance; and 6) on the date of this hearing and for the preceding year, Petitioner was employed at Wilsonart International.

Lake Lure PD

5. As stated above, Petitioner was a certified law enforcement officer through the North Carolina Criminal Justice Education and Training Standards Commission. (Respondent’s Exhibit 2) Petitioner was a police officer with Lake Lure PD until his resignation on June 5, 2009.

6. Sheriff Chris Francis appeared and testified at the administrative hearing. The Undersigned finds the Sheriff’s testimony to be credible. Prior to becoming the Sheriff of Rutherford County in 2010, Sheriff Francis was employed by Lake Lure PD. In 2008, he worked directly under the Chief of Police at Lake Lure and was responsible for all investigations within that agency.

7. On May 20, 2009, Sheriff Francis was asked by the Lake Lure Chief of Police to conduct an investigation into allegations that Petitioner was neglecting his duties as a patrol officer by abandoning his post in order to spend time with a woman at the Lake Lure Inn.

8. During the pendency of the investigation, Sheriff Francis reviewed security footage from the Lake Lure Inn, and also interviewed one of the employees from the Inn, Ms. Rochelle Williams.

9. Sheriff Francis interviewed Petitioner regarding his conduct while on duty as a sworn justice officer. Petitioner admitted to Sheriff Francis that he met Rochelle Williams while he was on duty as a Lake Lure police officer. Petitioner admitted he would meet with Ms. Williams several times a month while on duty and that the two would visit for extended periods of time in order to discuss matters not related to Petitioner’s work. Petitioner also admitted to Sheriff Francis that he and Ms. Williams would go to the Highlands Development while Petitioner was on duty and would engage in kissing and making out.

10. Sheriff Francis also learned that Petitioner’s conduct was not limited to Rochelle Williams. Petitioner was known to have met several other women while on duty as a Lake Lure police officer, including Brittany Hartley, Mandy McGail, and Katherine (“Kate”) Seaton.

11. Petitioner admitted to Sheriff Francis that he had in fact met Kate Seaton while he was on duty with Lake Lure PD. Petitioner admitted that he would engage in sexual intercourse with Ms. Seaton while he was on duty. This conduct occurred approximately twice a month over a three-month period in 2008/2009. Petitioner would abandon his post and would travel in his patrol vehicle to Highlands Development in order to meet Ms. Seaton. The two would then engage in sexual intercourse inside of Petitioner's patrol vehicle. Petitioner testified at the administrative hearing and admitted that each of these encounters lasted approximately 30 minutes. Petitioner admitted at the hearing that this sexual misconduct occurred while Petitioner was on duty. Petitioner made no attempt to call out of service prior to any of these meetings.

12. Petitioner also admitted to Sheriff Francis that he met Brittany Hartley and Mandy McGill in his official capacity as a law enforcement officer. However, Petitioner told Sheriff Francis that he only had sex with these women while he was off duty. This is consistent with Petitioner's testimony at the administrative hearing.

13. It is clear from the evidence presented at the administrative hearing that Petitioner was using his position as a Lake Lure police officer to meet women in the Lake Lure area. Petitioner was married at the time these events were taking place in 2008 and 2009. Petitioner would use the Highlands Development as an area to engage in "heavy making out" and sexual intercourse, while Petitioner was on duty in an official capacity. Petitioner's actions while at Lake Lure PD demonstrate a lack of integrity and a pattern of dishonesty. Petitioner abused his position as a sworn justice officer in order to satisfy his own sexual desires. Petitioner's continued abandonment of his post in order to engage in fraternizing with females and sexual misconduct placed the citizens of Lake Lure at risk. As aptly stated in the Lake Lure PD Investigative Report, "Cpl. Chris Shepherd had been neglecting his duties *and creating a public safety hazard by utilizing his time for personal gain.*" (Respondent's Exhibit 3, p.4)

14. Petitioner was given the option of resigning from Lake Lure PD in lieu of being fired. Petitioner chose to resign on June 5, 2009. (Respondent's Exhibit 4)

15. Several months later, On August 3, 2009, Petitioner signed a notarized statement regarding his misconduct at Lake Lure PD and resignation from that agency. Respondent's Exhibit 5. In that written statement, Petitioner stated "I have strengthened my walk with the Lord and my family life has strengthened as well." Petitioner went on to state that "Spindale Police Department has graciously given me a chance to redeem my actions and *I can assure you that this type of activity is in my past.*"

16. As set out in greater detail below, despite Petitioner's claim that he had corrected his behavior, Petitioner continued to engage in the same misconduct that lead to his resignation from Lake Lure PD.

Spindale PD

17. Petitioner obtained employment as a police officer with Spindale PD following his resignation from Lake Lure PD. On October 28, 2010, Petitioner was again under investigation for being observed outside his patrol area on multiple occasions and for meeting with a woman

while on duty for extended periods of time at a local business. Spindale PD had determined that Petitioner was involved with several women, including Kylie Waters, Brittany Moore, and Heather Crawford.

18. Petitioner testified at the administrative hearing and admitted that he was sexually romantic with Heather Crawford while he was employed as a Spindale police officer. As a result of the October 2010, investigation, Petitioner was given a direct order by the Chief of Police to cease all contact with the above-referenced females while Petitioner was on duty. Petitioner was further ordered that he was not authorized to leave his patrol area and that he was to limit his time within businesses to a brief period and not frequent the same business several times during his patrol shift. Petitioner was advised that he would be subject to possible termination if he continued any of the relationships. Petitioner signed the Spindale PD Work Action Form. (Respondent's Exhibit 6)

19. On August 3, 2011, Petitioner was suspended without pay for a period of five days for directly violating the previous order of the Chief of Police. Petitioner was not allowed the option of using compensatory time, sick leave or annual leave for the suspension. In a subsequent investigation, the Chief of Police learned that Petitioner had been engaging in an inordinate amount of personal telephone conversations and text messaging while on duty. Between the period of June 10, 2011, and July 6, 2011, Petitioner engaged in 13 hours of telephone conversation with Heather Crawford during the time Petitioner was on duty. Furthermore, during this same time period, Petitioner sent and received 1,689 text messages with Heather Crawford during the time Petitioner was on duty. The two were discussing personal matters not related to Petitioner's work as a law enforcement officer.

20. Petitioner testified at the administrative hearing and does not dispute that he was on duty when he engaged in personal telephone calls and text messages with Ms. Crawford, despite being directly ordered not to engage in such conduct. Petitioner admitted under oath that these numerous text messages and hours of telephone conversation were not in any way work related. Further, Petitioner does not dispute that he was on duty when engaged in this personal misconduct.

21. Petitioner resigned from Spindale PD following the August 2011 investigation. Petitioner's actions while at Spindale PD demonstrate a continued pattern of lack of integrity and a continued pattern of dishonesty. After being forced to leave Lake Lure PD, Petitioner continued to abuse his position as a sworn justice officer in order to meet women and engage in personal matters while on duty in an official capacity. Among other things, Petitioner engaged in continued sexual misconduct insofar as Petitioner met Heather Crawford in an official capacity as a Spindale police officer, and subsequently used his position to develop a romantic relationship with Ms. Heather Crawford. Petitioner's conduct at Spindale PD is repetitive of the misconduct Petitioner engaged in at Lake Lure PD prior to his departure from that agency.

22. Petitioner's wife, Amber Shepherd, testified at the administrative hearing, offering testimony that proved the following facts:

- a. Petitioner and Mrs. Shepherd were married prior to his employment at Lake Lure PD.

- b. Petitioner's personal misconduct led to their separation and eventual divorce in June 2013.
- c. Petitioner and Mrs. Shepherd have three children together. Upon their separation, Mrs. Shepherd gained sole custody of all three children. Additionally, a fourth child was born to Petitioner as a result of his relationship with Heather Crawford.
- d. Petitioner and Mrs. Shepherd remarried in October 2014.
- e. Petitioner and Mrs. Shepherd have sole custody of Petitioner's child with Heather Crawford.

23. There is no evidence to indicate that Petitioner's sexual misconduct that led to his resignations at Lake Lure PD and Spindale PD, and that led to his divorce from Amber Shepherd, have occurred since at least the date of his re-marriage in October 2014.

24. There is substantial evidence that Petitioner lacked the good moral character that is required of a sworn justice officer in this State. The evidence presented in this case establishes that Petitioner lacked honesty and integrity, and that Petitioner disregarded the rights and safety of the citizens of Lake Lure and Spindale. Petitioner's lack of honesty and integrity was repetitive and was not isolated in nature. Rather, Petitioner's egregious misconduct spanned two separate law enforcement agencies over a period of several years.

25. There is also substantial evidence that Petitioner has made a commendable effort to rehabilitate his moral character in the eyes of his wife and children. However, Petitioner's renewed dedication to his family for a period of time less than two years is not sufficient to rehabilitate his moral character to the level required of a sworn justice officer in this state.

26. The evidence further establishes that Petitioner willfully failed to discharge his duties insofar as Petitioner, while on duty, used his position as a sworn justice officer to meet, court, and engage in sexual conduct with multiple women. This willful failure to discharge duties included Petitioner abandoning his post on multiple occasions in 2009, in order to have sex and to "heavily make out" in his patrol vehicle.

27. For the reasons set out above, Petitioner's actions and conduct demonstrate that Petitioner does not, at this point in time, possess the good moral character that is required of all sworn law enforcement officers in this State.

28. Furthermore, for the reasons set out hereinabove, Petitioner willfully failed to discharge his duties in violation of North Carolina General Statute § 14-230.

CONCLUSIONS OF LAW

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 Notification of Probable Cause to Deny Justice Officer Certification letter, mailed by Respondent on January 7, 2016.

2. The North Carolina Sheriffs' Education and Training Standards 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 .0301(a)(8) provides that all justice officers employed or certified in the State of North Carolina shall be of good moral character.

4. 12 NCAC 10B .0204(d)(1) provides the Sheriffs' Commission may deny the certification of a justice officer when the Commission finds that the applicant for certification has committed or been convicted of:

- (1) a crime or unlawful act defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor which occurred after the date of initial certification.

5. Willful failure to discharge duties in violation of N.C. Gen. Stat. § 14-230 is classified as Class B Misdemeanor pursuant to 12 NCAC 10B .0103 (10)(b) and the Class B Misdemeanor Manual adopted by Respondent.

6. N.C. Gen. Stat. § 14-230 provides that it is unlawful for a public official to willfully fail to discharge the duties of his office. Harm to the public is a judicially recognized element of this offense. State v. Birdsong, 325 N.C. 418, 384 S.E. 2d 5 (1989). The record establishes that Petitioner willfully failed to discharge his duties within the meaning of N.C. Gen. Stat. § 14-230. Petitioner abandoned his post on numerous occasions in 2009 in order to have sex with Kate Seaton and to "heavily make out" with Rochelle Williams. Petitioner's conduct posed a direct threat to public safety, as noted in the Internal Affairs Investigation conducted by Sheriff Francis. Petitioner then engaged in similar misconduct while on duty as a police officer with Spindale PD.

7. 12 NCAC 10B .0204(b)(2) further provides the Sheriffs' Commission shall revoke, deny, or suspend a justice officer's certification when the Commission finds that the justice officer no longer possesses the good moral character that is required of all sworn justice officers.

8. Good moral character has been defined as honesty, integrity, and respect for the rights of others and for the laws of the state and nation. In Re Willis, 288 N.C. 1, 10 (1975).

9. Given the totality of the evidence presented at the administrative hearing, the Undersigned concludes Petitioner does not, at this time, possess the good moral character that is required of all sworn justice officers in this State for the reasons set out hereinabove. This includes, but is not limited to Petitioner's repeated sexual misconduct while on duty as a Lake Lure Police Officer, in addition to Petitioner's continued abuse of his position as a sworn officer while at Spindale Police Department. Pursuant to 12 NCAC 10B .0205, the period of denial shall be for an indefinite period based on Petitioner's lack of good moral character.

10. Based on the evidence presented and the testimony of the witnesses at the administrative hearing, the Respondent's proposed denial of Petitioner's certification due to Petitioner's lack of good moral character and failure to maintain the minimum standards required of all sworn justice officers under 12 NCAC 10B .0301 is supported by a preponderance of the evidence.

11. Pursuant to 12 NCAC 10B .0205(2)(a), when the Commission denies the certification of a justice officer for the commission of a Class B misdemeanor, the period of sanction shall be for a period of 5 years where the cause of sanction is commission or conviction of offenses as specified in 12 NCAC 10B .0204(d)(1).

PROPOSAL FOR DECISION

Based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the Undersigned recommends the Respondent deny Petitioner's application for certification for an indefinite period due to Petitioner's failure to maintain the good moral character that is required of sworn justice officers under 12 NCAC 10B .0300, in addition to Petitioner's commission of the Class B Misdemeanor offense of willful failure to discharge duties.

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.

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 any attorney of record. N.C.G.S. § 150B-42(a).

IT IS SO ORDERED.

This the 30th day of August, 2016.

David F Sutton
Administrative Law Judge