

STATE OF NORTH CAROLINA
COUNTY OF BURKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
16 DOJ 04490

<p>William Glenn Cannon Petitioner,</p> <p>v.</p> <p>Donna L. Sears, acting as Company Police Administrator for the NC Department of Justice and as designee of the NC Attorney General Respondent.</p>	<p style="text-align: center;">FINAL DECISION</p>
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This case came on for hearing on November 3, 2016, before the undersigned Administrative Law Judge in Newton, North Carolina. This case was heard upon the Petition for a contested case hearing filed by the Petitioner pursuant to Article 3, Chapter 150B of the North Carolina General Statutes seeking reversal of the Respondent's decision to revoke Petitioner's Company Police Officer Commission.

APPEARANCES

Petitioner: Lawrence D. McMahan, Jr.
Byrd, Byrd, McMahan & Denton, P.A.
Post Office Drawer 1269
Morganton, North Carolina 28680

Respondent: Whitney Hendrix Belich
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 revoke Petitioner's Company Police Officer Commission for failure to notify the Company Police Administrator of two Domestic Violence Protective Orders?

RULES AT ISSUE

12 NCAC 02I .0202
12 NCAC 02I .0212
12 NCAC 02I .0213

EXHIBITS

For Petitioner: Exhibits 1 through 5, 8 (same as Respondent's Exhibits), 6 and 7 ("P. Ex.")
For Respondent: Exhibits 1 through 5, 8 ("R. Ex.")

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 relied upon 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 denial letter, mailed by Respondent, the North Carolina Criminal Justice Education and Training Standards Division, Company Police Program (hereinafter "Company Police"), on January 26, 2016. (P. & R. Ex. 5)

2. Respondent has the authority granted under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 02I, to commission company police officers and to revoke, suspend, or deny such commission.

3. At the time of the incidents which are the subject of the present case, Petitioner was a commissioned company police officer employed by Delta Company Police, a certified company police agency.

4. On January 11, 2016, while employed as a company police officer, Petitioner was served with a Domestic Violence Protective Order or “50B” issued by a judicial official in Catawba County, North Carolina wherein it was ordered that Petitioner may not possess a firearm for official use as a law enforcement officer. (P. & R. Ex. 2)

5. On February 10, 2016, while employed as a company police officer, Petitioner was served with another Domestic Violence Protective Order or “50B,” issued by a judicial official in Buncombe County wherein it was ordered that Petitioner may possess a firearm for official use as a law enforcement officer. (P. & R. Ex. 1 & 3)

6. The protective orders were based on allegations of domestic violence.

7. 12 NCAC 02I .0202(a)(8) states that commissioned company police officers must notify the Company Police Administrator in writing of any Domestic Violence Protective Orders issued by judicial officials served upon them within five days. The regulation further provides that all notifications must be received by the Company Police Administrator within five days of the arrest or charge.

8. Donna Sears was the Company Police Administrator at the time when the two Domestic Violence Protective Orders were served on Petitioner. She did not receive any form of notification from Petitioner regarding either of these Domestic Violence Protective Orders.

9. Chief Richard Epley was unaware of the reporting requirement but notified the Company Police Administrator about the Domestic Violence Protective Order served on Petitioner on February 10, 2016. He did not know that Petitioner had been served with a Domestic Violence Protective Order on January 11, 2016, which ordered Petitioner to not possess or use a firearm even for work purposes. Petitioner had been permitted to use a firearm at work during that time.

10. Ms. Sears requested information from Petitioner regarding the Domestic Violence Protective Order entered on February 10, 2016. A written, notarized statement from Petitioner was received by the Company Police Program on February 26, 2016, sixteen days after the order was served on Petitioner. In this statement, in addition to the order served February 10, 2016, Petitioner also informed Respondent that a Domestic Violence Protective Order had been issued against him by a judicial official on January 11, 2016, in Catawba County. Attached to the notarized statement is another statement, dated December 19, 2011, signed by Petitioner, concerning an internal affairs investigation by the Lincoln County Sheriff’s Office concerning a Domestic Violence Complaint by a third woman against Petitioner which was dismissed on April 5, 2010. (P. & R. Ex. 4) Prior to receiving these statements, the Company Police Program had not received any form of notification from Petitioner that these orders had been issued.

11. Based upon paperwork from the courts and Petitioner’s own statements, Ms. Sears found probable cause that he had failed to notify her of these domestic violence orders within the required period of time. (P. & R. Ex. 5 & P. Ex. 6) Due to the lack of notification in this case, as well as, the fact that there were two such orders issued against Petitioner within a short period of

time by two separate individuals, Ms. Sears chose not to extend an offer of a lesser sanction to Petitioner in this case.

12. Petitioner testified that he was unaware that he had to report such orders to the Company Police Administrator within five days after service. He admitted being served with the two Protective Orders as court paperwork indicates, but he was not arrested or charged with a crime. The orders were eventually dismissed and no criminal charges were taken out against him. Petitioner admitted that he was required to review the Company Police rules and was tested on them prior to becoming a company police officer.

13. At the contested case hearing, Petitioner submitted a statement, verified on October 28, 2016, in which the writer claimed to be Petitioner's former girlfriend, that she had been contacted by Petitioner's former wives who "had been planning a strategy" to harm Petitioner's law enforcement career by filing domestic violence complaints against him. She filed the complaint against Petitioner (P. & R. Ex. 2) which she later had dismissed because Petitioner "was never a threat to me or anyone else." (P. Ex. 7)

14. Petitioner is currently employed by Delta Company Police in an unsworn position involving transportation. A Notice of Separation was sent to the Company Police Program stating the reasons for the termination from a sworn position as "[d]ue to pending investigation and issuance of domestic violence orders from several victims and possible charges of Bigamy." (R. Ex. 8)

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 02I .0202 sets forth the minimum standards for company police officers.

4. 12 NCAC 02I .0202(a)(8) states that, in order to maintain a company police commission, an officer must notify the Company Police Administrator in writing of all Domestic Violence Orders (50B) which are issued by a judicial official. It further provides that all notifications must be received by the Company Police Administrator within five days of the date of the arrest or charge.

5. 12 NCAC 02I .0212(c)(2) provides that a company police officer commission shall be revoked upon a finding that an officer fails to meet any of the required standards as specified in 12 NCAC 02I .0202.

6. 12 NCAC 02I .0213(a)(6) provides that the sanction for failure to make a notification as required by 12 NCAC 02I .0202(a)(8) shall be no less than three years.

7. The findings of the Company Police Administrator are supported by substantial evidence and are not arbitrary and capricious.

8. 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).

9. Petitioner has the burden of proof in the case at bar. *Overcash v. N.C. Dep't. of Env't & Natural Resources*, 172 N.C. App 697, 635 S.E.2d 442 (2006).

10. Petitioner has failed to prove that he notified the Company Police Administrator of two Domestic Violence Orders issued against him within the five days as required by the North Carolina Administrative Code.

DECISION

NOW, THEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, the Undersigned determines that the Respondent's decision to revoke the Petitioner's Company Police Officer Commission for a period of three years for failure to notify the Company Police Administrator of two Domestic Violence Protective Orders issued against him by judicial officials within the five days as required by the North Carolina Administrative Code is affirmed.

NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the

Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 15th day of December, 2016.

Selina Malherbe Brooks
Administrative Law Judge