

STATE OF NORTH CAROLINA
COUNTY OF MCDOWELL

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
16 DOJ 06381

<p>Juan Daniel Meraz Petitioner,</p> <p>v.</p> <p>NC Criminal Justice Education and Training Standards Commission Respondent.</p>	<p style="text-align: center;">PROPOSAL FOR DECISION</p>
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This case came on for hearing on November 9, 2016, before Administrative Law Judge David F. Sutton in Waynesville, 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: Juan Daniel Meraz
1621 Rutherford Road
Marion, North Carolina 28752

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 suspend Petitioner's law enforcement officer certification for the commission of the Class B misdemeanor offense of Assault on a Female?

RULES AT ISSUE

12 NCAC 09A .0204(b)(3)(A)
12 NCAC 09A .0103(24)(b)

EXHIBITS

Petitioner's exhibits 1 – 6 were admitted into evidence.

WITNESSES

The following witnesses testified for the Petitioner:

1. Juan Daniel Meraz

The following witnesses testified for the Respondent:

1. Josefina Amador
2. Sergeant Michael Hensley
3. Investigator Michelle Schilling

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 his notes to refresh his 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 May 23, 2016.

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 is a certified law enforcement officer, receiving his probationary certification on July 30, 2013, and his general certification on June 2, 2014 when he was employed as a full time law enforcement officer with the Marion Police Department.

4. Petitioner resigned from the Marion Police Department on December 21, 2015, during an investigation into the conduct which is the subject of these proceedings.

5. Petitioner is currently employed as a law enforcement officer with the Old Fort Police Department.

6. On December 18, 2015, Petitioner's live-in girlfriend and mother of his children, Josefina Amador, sought a domestic violence protective order (hereinafter "DVPO") against him alleging that he assaulted her on December 12, 2015 and December 17, 2015.

7. Ms. Amador and Petitioner were involved in an altercation on December 12, 2015, while in the home they shared. During the altercation, Petitioner grabbed Ms. Amador and "pulled her back by her upper body." Petitioner also pushed her towards the couch during the same altercation. Petitioner then left the residence.

8. On December 17, 2015, Ms. Amador and Petitioner again got into another altercation involving their children. At this time, the police were called to the scene.

9. Sgt. Michael Hensley arrived on the scene in response to a call about a domestic dispute. He spoke with Ms. Amador. Petitioner had left the scene. Ms. Amador told Sgt. Hensley that there had been an argument over the children. Sgt. Hensley noticed bruising on Ms. Amador's arm, which she indicated was from a previous altercation when Petitioner had grabbed her.

10. On December 18, 2015, Ms. Amador took out a DVPO against Petitioner, alleging he had strangled her on December 12, 2015 and that he had pushed and grabbed her on December 17, 2015.

11. At the hearing, Ms. Amador denied using the word "strangled" when she was assisted with the DVPO paperwork. She did feel afraid of him at the time she requested the protective order due to the two altercations described above.

12. Ms. Micelle Schilling is an investigator for Respondent Commission. Petitioner provided Ms. Schilling with a statement in which he admitted that "it was possible" he had pulled Ms. Amador's arm behind her and pulled her backwards on December 12, 2015. He also admitted to having shoved Ms. Amador out of the way during the altercation on December 17, 2015, as well as "wrestling" with her over their child.

13. At the hearing, Petitioner denied strangling Ms. Amador, however, he admitted that he touched her in an "unwanted way" on December 12, 2015, when he grabbed her. Petitioner denied touching her during the December 17, 2015, incident.

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)(3)(A) states that a law enforcement officer's certification may be suspended for the commission or conviction of a crime listed as a Class B Misdemeanor.
4. 12 NCAC 09A .0103(24)(b) defines Class B Misdemeanor and cites the Class B misdemeanor manual for a list of all misdemeanors identified as Class B.
5. Assault on a Female (N.C.G.S. § 14-33(c)(2)) is a Class B Misdemeanor.
6. The findings of the Probable Cause Committee of the Respondent are supported by substantial evidence and are not arbitrary and capricious.
7. 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).
8. The preponderance of the evidence is that Respondent's proposed suspension of Petitioner's law enforcement officer certification is supported by substantial evidence.
9. The preponderance of the evidence is that Petitioner committed the Class B misdemeanor offense of Assault on a Female when he assaulted Josefina Amador on December 12, 2015 and December 17, 2015.
10. Pursuant to 12 NCAC 09A .0205(b)(1), when the Commission suspends the certification of a criminal justice officer, the period of sanction shall not be less than five (5) years for the commission or conviction of a Class B misdemeanor.

PROPOSAL FOR DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, it is proposed that the Petitioner's law enforcement certification be suspended for no less than five (5) years for the commission of the Class B misdemeanor of assault on female.

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

IT IS SO ORDERED.

This the 12th day of December, 2016.

David F Sutton
Administrative Law Judge

STATE OF NORTH CAROLINA
COUNTY OF MCDOWELL

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
16 DOJ 06381

<p>Juan Daniel Meraz Petitioner, v. NC Criminal Justice Education and Training Standards Commission Respondent.</p>	<p>ORDER AMENDING PROPOSAL FOR DECISION</p>
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Pursuant to 26 NCAC 3.0129, for the purpose of correcting a clerical error, IT IS HEREBY ORDERED that the above-captioned Decision, issued from this Office on December 12, 2016, is amended as follows:

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

This the 12th day of December, 2016.

David F Sutton
Administrative Law Judge