

STATE OF NORTH CAROLINA
COUNTY OF HALIFAX

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
16 DOJ 06383

<p>Kemeya Myesha Pittman Petitioner,</p> <p>v.</p> <p>NC Criminal Justice Education and Training Standards Commission Respondent.</p>	<p>PROPOSAL FOR DECISION</p>
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This matter coming on to be heard in Halifax, North Carolina, on October 18, 2016, and it appearing to the undersigned that the Petitioner appears pro se, and the Respondent is represented by Assistant Attorney General Lauren Tally Earnhardt.

In hearing this matter, the undersigned 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.

After consideration of the sworn testimony of the witnesses, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned makes the following findings of fact:

1. The Petitioner is a citizen and resident of Halifax County, North Carolina.
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 09G, to certify correctional officers and to revoke, suspend, or deny such certification.
3. Both parties are properly before the Office of Administrative Hearings, in that jurisdiction and venue are proper, both parties received notice of hearing, and that the Petitioner received by certified mail, the proposed revocation letter, mailed by Respondent, the North Carolina Criminal Justice Education and Training Standards Commission (hereinafter "The Commission"), on May 23, 2016.
4. Petitioner is currently employed at Franklin Correctional, Division of Adult Corrections (hereinafter "DACP"), North Carolina Department of Public Safety (hereinafter "NC DPS").

5. Petitioner has been employed at Franklin Correctional for over one year and has been employed with DAC since 2007.

6. Petitioner has been a certified correctional officer through Respondent Commission since 2008.

7. On May 31, 2014, Petitioner went into the Belk's Department Store (hereinafter "Belk's") in Rocky Mount, North Carolina. While Petitioner was in the store, she located a set of bed sheets similar to the type of sheets her friend's daughter had received as a gift.

8. Petitioner took the sheets to the sales register inquiring about the return policy for items without a sales receipt.

9. At that time, Petitioner was asked to produce identification which she did, and the sales associate processed a return.

10. Petitioner was given a Belk's gift card for the returned price of the item.

11. Petitioner testified that she did not recall what she purchased with the gift card or if she purchased anything from Belk's that same day but she did know that she spent part or all of the money placed on the gift card by the Belk's sales associate for the return of the bed sheets.

12. On June 15, 2014, Petitioner returned to Belk's in her DAC uniform, picked up another set of the same bed sheets, and went to the same sales register and the same sales associate.

13. Petitioner testified that she returned to Belk's in order to correct the previous situation which she knew was wrong and to either pay for the sheets or repay the gift card.

14. When Petitioner arrived at the register the sales associate picked up the telephone to contact loss prevention.

15. Petitioner was scared and nervous and left the store without purchasing or returning any items.

16. Petitioner was contacted by Detective Tomlinson from the Rocky Mount Police Department several days later. Petitioner admitted to Detective Tomlinson that she received and used a gift card from Belk's and that she knew she was wrong for doing so.

17. Petitioner was charged with the felony offenses of Obtaining Property by False Pretense with the date of offense of May 31, 2014, and Attempt to Obtain Property by False Pretenses with the date of offense of June 15, 2014.

18. Petitioner was prosecuted for these offenses, and entered into a Deferred Prosecution Agreement on December 10, 2014.

19. Petitioner admitted responsibility for these offense, and was placed on 12 months supervised probation under the following terms and conditions: she was required to pay restitution and probation fees, and to complete 24 hours of community service.

20. Petitioner notified DAC of these charges and provided her employer with a statement regarding the incidents.

21. Crystal Mitchell is employed at Belk's in Rocky Mount as a loss prevention officer. Ms. Mitchell has been employed at Belk's for approximately six (6) years but has been at the Rocky Mount location for 3 ½ years. As part of her job duties, Ms. Mitchell reviews close circuit television sets throughout Belk's for odd behaviors, thefts, and customer and employee falls and accidents.

22. On May 31, 2014, a sales associate contacted Ms. Mitchell about a customer returning an item when she was seen entering the store empty handed.

23. Ms. Mitchell reviewed the video surveillance, backtracking the recording to find out if Petitioner had the product she returned when she entered the store. Ms. Mitchell located Petitioner entering Belk's empty handed, walk to the section of the store where the sheets are located and pick up a set of sheets, take them to the sales register and receive a gift card for a return. Petitioner went to the Men's section of the Belk store and purchased a Ralph Lauren polo shirt with the gift card and then exited the store into the mall.

24. After this transaction, Ms. Mitchell compiled documents and videos but did not contact law enforcement.

25. On June 15, 2014, Ms. Mitchell was contacted again by the same sales associate explaining the Petitioner had returned and was attempting to return the same item again.

26. By the time Ms. Mitchell located the register on the surveillance Petitioner had abandoned the transaction and left the store.

27. Ms. Mitchell reviewed the register transaction and determined that the sales associate had initiated a return and scanned the bed sheets that Petitioner had brought to the sales register.

28. After this second incident, Ms. Mitchell contacted Rocky Mount Police Department.

29. Detective Tomlinson is employed with Rocky Mount Police Department. Detective Tomlinson was contacted by Ms. Mitchell and received all the documentation Ms. Mitchell had compiled from both incidences.

30. Detective Tomlinson was able to confirm that the person involved in the incidents on the video was Petitioner and contacted her regarding this matter.

31. Detective Tomlinson interviewed the Petitioner, and she explained that she had a similar set of sheets she was going to return so she took the set to the sales register, the sales associate processed a return, she received a gift card and then left the store.

32. Detective Tomlinson testified that during his interview, Petitioner told him that she went to Belk's on the second occasion to "do it again".

33. Detective Tomlinson charged Petitioner with the criminal offense of Obtaining Property by False Pretense and Attempting to Obtain Property by False Pretenses.

34. Detective Tomlinson also explained that Petitioner has been extremely cooperative with him throughout this entire process.

35. Ms. Michelle Schilling is employed with the Criminal Justice Standards Division as an investigator.

36. Ms. Schilling was assigned to investigate the charges against Petitioner after they received a Report of Arrest and a copy of Petitioner's statement from DAC.

37. Ms. Schilling reviewed the documents from DAC, received and reviewed documents from Detective Tomlinson and Ms. Mitchell, then spoke with Petitioner.

38. During Ms. Schilling's interview, Petitioner explained that she was at Belk's with a friend, that she took the sheets to the sales register to ask about the return policy, the clerk took her identification, processed the return and handed Petitioner a gift card, then Petitioner and her friend left the store heading into the mall.

39. Petitioner explained that she returned to Belk's in her correctional officer uniform a week later because she wanted to do the right thing. Petitioner explained to Ms. Schilling that she had the gift card with her and approached the same sales associate and asked to speak with a manager, then stated she needed to get to work and left, saying she would return later.

40. During Ms. Schilling's review of the surveillance video, she did not see that Petitioner presented the gift card to the sales associate.

41. Petitioner is remorseful about her actions, and is apologetic for her behavior.

Based upon the foregoing findings of fact, the undersigned concludes as a matter of law:

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter herein.

2. To the extent that the Findings of Facts contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.

3. 12 NCAC 09G .0504(a) states that “[t]he Commission shall revoke the certification of a correctional officer or probation/parole officer when the Commission finds that the officer has committed or been convicted of a felony offense.”

4. 12 NCAC 09G .0505(a)(1) states that “[w]hen the Commission revokes or denies the certification of a corrections officer pursuant to 12 NCAC 09G .0504 of this Section, the period of the sanction shall be 10 years where the cause of sanction is: (1) commission or conviction of a felony offense.”

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.

7. 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).

8. Petitioner committed the felony offense of Obtaining Property by False Pretense on May 31, 2014, and has failed to meet her burden of proof with regard to this claim.

9. Petitioner committed the felony offense of Attempt to Obtain Property by False Pretenses on June 15, 2014, and has failed to meet her burden of proof with regard to this claim.

PROPOSAL FOR DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, it is proposed that Respondent revoke Petitioner’s correctional officer certification for a period of ten (10) years for the commission of a felony offense.

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 18th day of November, 2016.

Philip E Berger Jr.
Administrative Law Judge