

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
21 DOJ 05301

<p>Tyler David Gilbraith Petitioner,</p> <p>v.</p> <p>NC Sheriffs Education and Training Standards Commission Respondent.</p>	<p>PROPOSAL FOR DECISION</p>
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This contested case was heard on April 25, 2022 before Michael C. Byrne, Administrative Law Judge, at the Office of Administrative Hearings in Raleigh, North Carolina, following the request of Respondent NC Sheriffs' Education and Training Standards Commission ("Respondent") for appointment of an Administrative Law Judge to hear the case of Petitioner Tyler David Gilbraith ("Petitioner") pursuant to N.C.G.S. 150B-140(e).

APPEARANCES

For Petitioner:
None

For Respondent:
Mr. Robert J. Pickett
Assistant Attorney General
North Carolina Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602
Attorney for Respondent

EXHIBITS

For Petitioner:
None

For Respondent:

Exhibits 1-7 were admitted, with the exception of portions of any exhibits referencing polygraph examination results, which are excluded pursuant to North Carolina law. The Tribunal ordered all such information redacted.

WITNESSES

For Petitioner: None

For Respondent: Sirena Jones

ISSUE

Whether Respondent correctly found probable cause to revoke Petitioner's justice officer certification.

PRELIMINARY MATTERS

1. Review of the record and the docket shows that Petitioner received notice of the hearing in this contested case by certified mail. At no point did Petitioner contact the Office of Administrative Hearings ("OAH") and request a continuance of the hearing, informally or otherwise.

2. Petitioner did not appear at the noticed time of the hearing and failed to offer any explanation. When contacted by OAH staff, Petitioner submitted an email stating, "I will not be attending. I moved to [Ohio] and could [not] get the time off work. I apologize for the inconvenience. Thank you."

3. The Tribunal considered this information and pursuant to its authority under N.C.G.S. 150B-33 elected to treat Petitioner's communication as a motion to continue the hearing. The Tribunal considered the timing and form of Petitioner's request, concluded that Petitioner had not shown good cause for a continuance under 26 N.C.A.C. 3.0118, and denied the motion.

4. Pursuant to 26 N.C.A.C. 3.0114(a), if a party fails to appear at a hearing after being duly noticed, the administrative law judge may take various actions, including dismissal of the petition. The Tribunal considered the appropriate course of action and proceeded with the contested case hearing. Based upon the testimony of the witnesses, consideration of all the admitted exhibits, and all evidence of record, the Tribunal makes the following:

FINDINGS OF FACT

1. 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, and suspend such certification.

2. On October 25, 2021, Respondent informed Petitioner by certified mail that it had found probable cause to revoke Petitioner's justice certification. The specific grounds for this action was in the course of applying for employment with the Iredell County Sheriff's Office, that entity discovered that Petitioner in 2019 was denied employment following a conditional offer of employment by the Hickory Police Department.

3. Respondent discovered that Petitioner failed to include the denial of conditional employment from the Hickory Police Department on his Personal History Statement (Form F-3) submitted to Respondent as part of Petitioner's efforts to obtain employment with Iredell County.

4. The Form F-3 specifically inquires of applicants, at Question 26, "Have you ever been denied employment by a criminal justice agency after a conditional offer of employment was made?" Petitioner was thus required to answer this question and to answer it truthfully.

5. Respondent investigated the matter and ultimately found probable cause that Petitioner made a material misrepresentation regarding the matter on his Form F-3. Respondent duly notified Petitioner of its resulting intention to revoke his justice office certification. Petitioner timely requested a contested case hearing.

6. On the noticed date of the hearing, as noted, Petitioner did not appear. He thus offered no explanation for his actions admissible in evidence, though his pleadings describe the omission as an "honest mistake." (See Petitioner's Prehearing Statement).

7. Sirena Jones ("Jones"), an employee investigator of Respondent, testified on behalf of Respondent that she interviewed Petitioner regarding the omission as a part of her investigation of the matter. The Tribunal finds Jones to be a credible witness.

8. In response to questioning from the Tribunal, Jones indicated that she could not say whether she believed Petitioner's representation, also made to her, that Petitioner's Form F-3 omission was an honest mistake.

9. Based on the totality of the evidence, including Jones' credible testimony and the recent (2019) denial of conditional employment, the Tribunal concludes by the greater weight of the evidence that Petitioner's claim of an honest omission on his Form F-3 is not credible. Rather, the Tribunal concludes, in agreement with Respondent, that the matter involves a material misrepresentation or omission on Petitioner's Form F-3.

10. No mitigating factors or evidence were presented at the hearing.

11. The Tribunal has concerns regarding the lack of professionalism with which Petitioner approached his (non)attendance at the contested case hearing. However, that is not determinative.

CONCLUSIONS OF LAW

1. As the Respondent seeks revocation of Petitioner's certification, Respondent has the burden of proof as to its claims against Petitioner. The responsible party for the burden of proof must carry that burden by a greater weight or preponderance of the evidence. Black's Law Dictionary cites that "preponderance means something more than weight; it denotes a superiority of weight, or outweighing." The party with this burden of persuasion must provide proof to convince the trier of fact that the alleged state of facts is true. If evidence is evenly balanced, the

party with the burden of persuasion loses. Wallace Connell Ransom v. NC Sheriffs' Education and Training Standards Commission, 2013 WL 811606.

2. Under 12 NCAC 10B.0204(c)(1) and (2), Respondent may (among other actions) revoke a justice officer certification when a certified person:

(1) has knowingly made a material misrepresentation of any information required for certification or accreditation from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission. This rule shall also apply to obtaining or attempting to obtain in-service firearms requalification as required by 12NCAC 10B.2000 and .2100;

(2) has knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, obtained, or attempted to obtain credit, training or certification from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission. This Rule shall also apply to obtaining or attempting to obtain in-service firearms requalification as required by 12NCAC 10B .2000 and .2100

Donald Ray McGlamery v. NC Sheriffs Education and Training Standards Commission, 2020 WL 11273122.

3. The Form F-3 specifically inquires of applicants, at Question 26, "Have you ever been denied employment by a criminal justice agency after a conditional offer of employment was made?" Petitioner was thus required to answer this question and to answer it truthfully. He did not do so.

4. Honesty is an essential attribute of justice officers. Leigh Ann Branch v. N.C. Sheriffs' Education and Training Standards Commission, 2008 WL 4378250. While not every dishonest act during the lifetime of an individual automatically disqualifies that person from the law enforcement field, this case involved omission of a recent conditional employment on a form submitted to Respondent. There were no mitigating factors presented. The Tribunal concludes as a matter of law that Respondent correctly found just cause in this matter.

PROPOSAL FOR DECISION

The Tribunal recommends that Respondent **REVOKE** Petitioner's justice officer's certification.

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).

SO ORDERED.

This the 25th day of April, 2022.



Michael C. Byrne
Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service:

Tyler David Gilbraith
3724 Richard Avenue
Grove City OH 43123
Petitioner

Robert J Pickett
NC Department of Justice
rpickett@ncdoj.gov (served electronically on April 25, 2022)
Attorney For Respondent

This the 26th day of April, 2022.



Jerrod Godwin
Law Clerk
N.C. Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, NC 27609-6285
Phone: 919-431-3000