

STATE OF NORTH CAROLINA
COUNTY OF PITT

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
20 DOJ 04574

<p>Matthew Lee Mooring Petitioner,</p> <p>v.</p> <p>NC Criminal Justice Education and Training Standards Commission Respondent.</p>	<p>FINAL DECISION</p>
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THIS MATTER came on for hearing remotely¹ on March 17, 2021 before Administrative Law Judge J. Randolph Ward in Farmville, upon Respondent's request, pursuant to N.C. Gen. Stat. § 150B-40(e), for the designation of an Administrative Law Judge to preside at the hearing of this contested case under Article 3A, Chapter 150B of the North Carolina General Statutes.

¹ Via Microsoft Teams.

APPEARANCES

Petitioner: Dal Floyd Wooten
Wooten Law Firm
Kinston, N.C.

Respondent: Brenda Rivera, Assistant Attorney General
Department of Justice
Law Enforcement Liaison Section
Raleigh, N.C.

ISSUE

Whether the Petitioner law enforcement officer knowingly allowed his then girlfriend to complete coursework and take some of the tests required to acquire credit for an online Mandatory In-Service Training (“MIST”) course.

WITNESSES

Petitioner: Matthew Mooring
Kelly Buck

Respondent: Kellie Harrell
Walter Alexander Setzer
Lt. Shari Groccia
Kevin Wallace

RULES AT ISSUE

12 NCAC 09A .0204(b)(7); 12 NCAC 09A .0205(b)(5)

STATUTES AND RULES

N.C. Gen. Stat. §§ 14-223; 150B-41; 150B-42(a); 12 NCAC 09G .0102(10); 12 NCAC 09G .0201(10)(cc); 12 NCAC 09G .0504(b)(3); 12 NCAC 09G .0505(b)(1).

UPON DUE CONSIDERATION of the arguments and stipulations of counsel; the exhibits admitted; and the sworn testimony of each of the witnesses, viewed in light of their opportunity and ability to know of relevant facts and occurrences, any interests they may have in the outcome of the case, and whether their testimony is reasonable and consistent with other

credible evidence; and, upon assessing the greater weight of the evidence from the record as a whole in accordance with applicable law, the undersigned makes the following:

FINDINGS OF FACT

1. At the time incidents giving rise to this contested case, the Petitioner Matthew Lee (“Matt”) Mooring had served as a law enforcement officer with the Kinston Police Department and Grifton Police Department and had been employed by the Greenville Police Department on October 19, 2017. (Respondent’s Ex. 4) (T pp 141-142)

2. At the time Petitioner began working for the Greenville Police Department, he was living with Ms. Kelly Buck, and he agreed that their relationship was “basically like a marriage,” including sharing financial responsibility for their home. They shared a notebook with usernames and passwords for programs and sites dealing with their finances and personal matters. However, Petitioner’s Police Department materials were kept in his police car, and he did not expose to Ms. Buck “police department passcodes for such things as NCAWARE and Leads and things of that nature -- eCitation, eCrash.” (T pp 16-17; 50-51)

3. When he began work with the Greenville Police Department, Petitioner was required to complete approximately eight weeks of field training, while also doing a “community project” examining a designated Greenville neighborhood to recommend safety improvements, and to complete a set of mandatory in-service training (“MIST”) courses within “1 to 2 weeks.” (T p 20)

4. Just as he was beginning work at the Greenville Police Department, Petitioner was awarded joint custody of his two sons by a previous marriage who he had not been able to see regularly for some time. Despite his challenging schedule in the early weeks of his new job, he wanted to spend substantial time with his children, and felt that he might lose the privilege if he did not. (T p 18)

5. Petitioner felt “slammed” mentally and physically with all his responsibilities, and unsure if he would “be able to get it all done.” (T p 21) The MIST courses ran on the Moodle platform, with which he was unfamiliar, and this apparently slowed his progress. Ms. Buck was familiar with Moodle, and Petitioner sought her help, rather than that of fellow officers, because he was concerned that it might make him look less capable.

6. Petitioner did much of his MIST work on his work laptop from the Greenville Police Department. (T p 116) But on “[a]ny day I was off,” he would go to Ms. Buck’s restaurant in Grafton and use the laptop she kept there to do his course work. Petitioner testified that, “In between her work [activities] she would sit down with me and help me.” (T p 22; 39) He also “asked her to [review the course material and] help me take notes ... to help prepare me for the test” when he was not at her shop (T p 21), and he gave Ms. Buck his username and password to access the MIST material on Moodle. (T p 35) All of the notes made by the couple were saved in the same binder. (T p 47)

7. Petitioner's MIST course was a series "manuals" organized into 11 "Courses" with interim and "Final Exam" "Quizzes." (T p 48; Respondent's Exhibit 2) Users could skip around to the various Courses, but success on the interim quizzes and the "Quiz: Final Exam" for each Course was necessary for credit. When a student passed a "Quiz: Final Exam" (s)he could generate a "Certificate of Completion" for that particular Course. Petitioner's record showed that his courses were completed between November 6 – 24, 2017. (T p 114)

8. More than a year after Petitioner's MIST courses were completed – and Petitioner and Ms. Buck were no longer in a romantic relationship -- Ms. Buck volunteered the information to Grifton Police Department Chief Brian Silva that she had taken some of Petitioner's tests for his 2017 mandatory in-service training. Ms. Buck denied that it was her intention to harm Petitioner's career. (T pp 64; 68-69)

9. On November 7, 2018, Mr. Walter Setzer, a field representative for the Criminal Justice Standards Division, interviewed Ms. Buck, who told him "she had completed on the level of 13 courses, in-service training, via this Moodle account on Petitioner's behalf." He spoke with her again on November 28, 2018, and recorded "that she had completed 11 of the in-service training courses for Mr. Mooring[.]" (T p 109)

10. Mr. Setzer interviewed Petitioner on November 26, 2018, who told him that Ms. Buck had "assisted him by preparing notes regarding the course material, but [that] he took all of the tests, and then she printed out all of the certificates for him." (T p 109)

11. Lt. Shari Groccia, Director of Internal Affairs for the Greenville Police Department, investigated the subject incident for that agency. Mr. Seltzer indirectly contacted her when he learned that Petitioner had been employed in Greenville rather than the Grifton Police Department. She interviewed Officer Mooring, whose answers were consistent with his responses to Mr. Setzer questions, including that he "felt that [he] had taken all the tests."

12. Petitioner testified that, following his interview with Lt. Groccia, he "wanted to be able to verify what I was telling her," and contacted the community college that administered the MIST courses for the Greenville Police Department. However, he was refused access to his MIST records, and told that they "had to be requested either by the courts or the agency itself." (T p 29-30)

13. Kellie Mazingo Harrell, law enforcement training coordinator for Pitt Community College, testified that, "Moodle ... records all online activity for every single thing a student does," and can "show you when someone did something at a specific time and date," although anyone with access to the username and password could have done it. (T pp 101-103)

14. Using the IP address of Ms. Buck's laptop, Lt. Groccia compared the date and time that each "Quiz: Final Exam" was completed to Petitioner's records of when he was on duty with the Greenville Police Department. She found that some of these tests were taken when Officer Mooring had access to Ms. Buck's laptop, but that three of the tests -- taken on November 20th, 21st and 26th, 2018 -- were taken while he was on duty on Ms. Buck's laptop. (T pp 119, 123-124)

15. Ms. Buck credibly testified that she did take some of the tests for Petitioner, but not all of them, and did not recall making a distinction between the interim and final “Quizzes.” (T pp 62-63)

16. The greater weight of the evidence shows that Ms. Buck actually took at least three of the Petitioner’s eleven MIST “Quiz: Final Exams”

17. Officer Mooring and Ms. Buck each credibly testified that he requested that she take notes on the MIST material; that he did not request that she take the final quizzes for him; that he believed he had taken all of the required eleven tests himself; that she did take some but not all of the quizzes; and, that she never told that had taken these tests for him. (T pp 25, 31-33, 54, 63, and 66-67)

18. The evidence does not support a finding that the Petitioner knowingly and willfully sought to fraudulently obtain course credit and certification.

19. The Internal Affairs investigation by Greenville Police Department, a single allegation of poor judgment was sustained against Petitioner for providing Ms. Buck with access to his mandatory in-service training courses and allowing Ms. Buck to take notes for him. (T pp 129, 136) Petitioner was given a written reprimand, and put on administrative duty. He retook and passed the MIST courses, and the police department submitted this to the Respondent to satisfy his certification requirements, with the intention of putting him back on duty.

20. On July 9, 2020, the Commission’s probable cause committee found probable cause that Petitioner obtained or tried to obtain training credit from the Commission by means of false pretense, deception, defraudation, misrepresentation, or cheating. (Respondent’s Ex. 8) (T p 152) The Committee proposed as his sanction a written reprimand and that Petitioner retake all of the 2017 mandatory in-service training, except firearms. (Respondent’s Ex. 8) (T p 152) Commission voted not to accept the lesser sanction. (Respondent’s Ex. 8) (T p 153)

21. The Respondent gave the Petitioner due notice of his right to a hearing in the Office of Administrative Hearings by letter dated September 11, 2021, and Officer Mooring filed his Petition on November 19, 2020.

22. The Office of Administrative Hearings gave the parties due Notice of Hearing on February 15, 2021.

Based on the foregoing Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction of the parties and the cause. N.C. Gen. Stat. § 150B-40(e).

2. The North Carolina Criminal Justice Education and Training Standards Commission has the duty and authority, granted under Chapter 17C of the North Carolina General Statutes and Title 12, Chapter 09G of the North Carolina Administrative Code, to certify law enforcement officers, and to revoke, suspend, or deny such certification. N.C. Gen. Stat. § 17C-6(a)(3).

3. “Probable cause is defined as the existence of facts and circumstances known to the decision maker which would induce a reasonable person to commence a prosecution.” *Martin v. Parker*, 150 N.C. App. 179, 182, 563 S.E.2d 216, 218 (2002) (internal cites omitted).

4. In this contested case, subject to Article 3A of the Administrative Procedure Act, the facts must be established, upon consideration of the record as a whole, by evidence admissible in the General Court of Justice, or if necessary, “the most reliable and substantial evidence available.” N.C. Gen. Stat. §§ 8C; 150B-2(c); 150B-41(a).

5. Except as otherwise provided by statutes or by rules adopted under G.S. 150B-38(h), the rules contained in Title 26, Chapter 03 shall govern the conduct of contested case hearings under G.S. 150B-40 when an Administrative Law Judge has been assigned to preside in the contested case. 26 NCAC 03 .0101(d).

6. The Respondent Commission may suspend, revoke, or deny the certification of a criminal justice officer when the officer “has knowingly and willfully, by any means of false pretense, deception, defraudation, misrepresentation or cheating whatsoever, obtained or attempted to obtain credit, training, or certification from the Commission[.] 12 NCAC 09A .0204 (b) (7).

7. The preponderance of the credible evidence adduced at the hearing shows that the Petitioner did not knowingly and willfully seek to deceive, defraud or otherwise falsely obtain credit and certification within the meaning of 12 NCAC 09A .0204 (b) (7).

8. To the extent that the foregoing Findings of Fact contain conclusions of law, or that these Conclusions of Law are findings of fact, they are intended to be considered without regard to their given labels. *Warren v. Dep't of Crime Control*, 221 N.C. App. 376, 377, 726 S.E.2d 920, 923, *disc. rev. den.*, 366 N.C. 408, 735 S.E.2d 175 (2012); *In re Simpson*, 211 N.C. App. 483, 487-88, 711 S.E.2d 165, 169 (2011).

9. A judge is not required to find all the facts shown by the evidence, but only sufficient material facts to support the decision. *Green v. Green*, 284 S.E.2d 171,174, 54 N.C. App. 571, 575 (1981); *In re Custody of Stancil*, 179 S.E.2d 844,847, 10 N.C. App. 545, 549 (1971). Specific findings are not required on each piece of evidence presented. *See Flanders v. Gabriel*, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612 (1993) (stating that the tribunal "need only find those facts which are material to the resolution of the dispute").

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned respectfully offers the following

PROPOSAL FOR DECISION

That the Commission **GRANT** the Petitioner Law Enforcement Officer Certification, if or when he has met all the current qualifications for that certification.

NOTICE

The agency that will make the final decision in this contested case is the **North Carolina Criminal Justice Education and Training Standards Commission**.

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).

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).

The agency shall serve a copy of its Final Decision in this case on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6700.

SO ORDERED.

This the 23rd day of May, 2022.



J Randolph Ward
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.

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This the 23rd day of May, 2022.



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