

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
21 DOJ 01688

Joshua Ryan Core
Petitioner,

v.

NC Sheriffs Education and Training Standards
Commission
Respondent.

PROPOSAL FOR DECISION

THIS MATTER came on for hearing on September 28, 2021 before Administrative Law Judge J. Randolph Ward in Raleigh, 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.

APPEARANCES

Petitioner: Joshua Core, *Pro Se*
Raleigh, North Carolina

Respondent: Robert J. Pickett, Asst. Attorney General
Department of Justice
Law Enforcement Liaison Section
Raleigh, North Carolina

ISSUES

Is Respondent's denial of Petitioner's justice officer certification for knowingly making a material misrepresentation concerning information required for certification from the North Carolina Criminal Justice Education and Training Standards Commission, within the meaning of 12 NCAC 10B .0204(c)(1), supported by a preponderance of the evidence?

Is Respondent's denial of Petitioner's justice officer certification for knowingly and designedly by means of false pretense, deception, fraud, misrepresentation, or cheating to obtain certification from the Respondent or the North Carolina Criminal Justice Education and Training Standards Commission, within the meaning of 12 NCAC 10B .0204(c)(2), supported by a preponderance of the evidence?

RULES AT ISSUE

12 NCAC 10B .0204(c)(1) & 12 NCAC 10B .0204(c)(2)

UPON DUE CONSIDERATION of the arguments and stipulations of the parties; the exhibits admitted; and the sworn testimony of each of the witnesses, viewed in light of their opportunity to see, hear, know, and recall relevant facts and occurrences, any interests they may have, and whether their testimony is reasonable and consistent with other credible evidence; and, upon assessing the evidence from the record as a whole in accordance with the applicable law, the undersigned makes the following:

FINDINGS OF FACT

1. At the time of the hearing, the Petitioner Deputy Sheriff Joshua Core was serving at Falls Lake Academy in Creedmoor as a student resource officer for the Granville County Sheriff's Office. He was previously certified by the Criminal Justice Education and Training Standards Commission (hereinafter, "CJETSC") and served with the Butner Public Safety Department from April 2016 through January 2019. He was promoted to Sergeant after three years of service in that Department.

2. When he was employed by the Granville County Sheriff's Office and applied to the Respondent Sheriffs' Education and Training Standards Commission ("SETSC") for justice officer certification, Respondent became aware that Petitioner had omitted from his list of former employers in his application for certification to SETSC the Triad High School in North Lewisburg, Champaign County, Ohio. When Petitioner was 25 years old and working at the high school as a coach and substitute teacher, while also serving as a patrolman with the local police department, he was accused of having inappropriate relationship with a high school student. Petitioner testified that this was the worst experience of his life, and that there were times he did not want to leave his home. The allegations were investigated by the Champaign County Sheriff's Office, which had timely and complete access to the persons and statements providing actual first-hand knowledge of the events. After suffering through accusatory press reports and lurid speculation, he was cleared, and no charges were brought. He was returned to full duty as a police officer on October 20, 2012. *See* Respondent's Exhibit 6, page 30 of the PDF package (hereinafter, "R Ex 6 p 30"). He continued his employment as a law enforcement officer in Ohio for several years before moving to North Carolina.

3. Following the investigation, which took place primarily February 28 – May 13, 2012 (R Ex 6 p 32-44), the Triad Local School District sent Petitioner a letter / notice on May 20, 2012 stating their "intent to reemploy you in the same capacity as the prior school year" with "reasonable assurance that your current position as a substitute will be yours for the 2012-2013 school year." Triad's Treasurer, Ms. Cohn, signed the letter. When she sent it to Butner investigators in 2019, she added an asterisk with the statement, "This was sent prior to the Ohio Dept. of Education's decision to deny Mr. Core's certification." (R Ex 6 pgs. 30 & 62) The direct and circumstantial evidence shows that this letter was intended for its stated purpose when it was

sent, and reflected the judgment of the knowledgeable local investigators that Deputy Core's actions, if at times unwise, were not unlawful.

4. At the time of the incident, Petitioner had a provisional teaching license and pending application with the Ohio Board of Education for a four-year teacher's license. Following the adverse publicity concerning the allegations, he had no intention of pursuing a teaching career. In 2014, the Ohio Board of Education permanently revoked his ability to teach in Ohio without actual notice to Deputy Core. The Resolution "permanently denying" his teaching license relied in part on allegations that were not substantiated by the Champaign County Sheriff's officers and Triad school personnel who had investigated the matters, including that he had kissed the teen and had a "inappropriate relationship" with her. (R Ex 6, pgs. 43 & 79) Petitioner credibly testified that, partly because of Triad's May 20, 2012 letter, he thought that not pursuing the teaching license and paying the associated dues would simply result in his provisional license expiring, and that he changed his address more than once during this period and did not receive actual notice of the allegations by the Ohio Board of Education. The license expired on June 30, 2013, before the Board's "permanent" revocation action. (R Ex 6 p 88)

5. The news stories of accusations against Petitioner remained on the internet. In January 2019, the Butner Public Safety Department received a complaint about Petitioner's prior employment with Triad. During the course of an internal investigation led by Capt. Brad A. Knutson, the Department learned for the first time that Petitioner had worked as a substitute teacher and coach for Triad and he had been the subject of a criminal investigation. Butner obtained personnel records from Triad and the Ohio Board of Education and the criminal investigation file. It is uncontested that the Petitioner failed to disclose his employment with Triad High School or the incident on his application to the Butner Public Safety Department. (Ex 12 p 115-119). After the Department began considering disciplinary action, Petitioner resigned on January 30, 2019. (R Ex 6 p 11)

6. The Petitioner did make an obscure reference to his provisional Ohio teaching license ("ODE") on his Butner application and wrote that he "decided not to pay [dues] and allow it to expire." (Ex 12 p 115)

7. Petitioner apparently did not understand that part time work for Triad Schools made him an "employee." In his letter to the Commission's Director, Ms. Konopka, he wrote, "As you know I was on the list to be a substitute teacher for Triad Schools and I coached soccer which was a supplemental position not a faculty position of the school. I still contend I was not an employee of Triad Schools." (Ex 1 p 2) However, CJETSC's application form requested information about both his full-time and part-time employment. He disclosed four part time jobs on the application but omitted Triad Schools.

8. The Commission found probable cause to believe that Petitioner's justice officer certification should be denied due to "knowingly [making] a material misrepresentation of... information required for certification ... from the Commission;" and, "knowingly and designedly by any means of false pretense, deception, fraud misrepresentation or cheating whatsoever ... obtaining ... certification from" CJETSC, in violation of 12 NCAC 10B .0204(c)(1) and (2).

9. A preponderance of the evidence establishes that Petitioner knowingly omitted his employment history with Triad Schools to avoid the embarrassment and scrutiny of the incident that caused him to abandon that employment, in violation of 12 NCAC 10B .0204(c)(1).

10. A preponderance of the evidence shows that Petitioner reasonably believed that his failure to pursue licensure as a teacher in Ohio would merely cause his provisional license to expire, and that he was unaware of the punitive action of the Ohio Board of Education.

11. Petitioner was hired by the Granville County Sheriff's Office on April 18, 2019. Former Granville County Sheriff Charles Noblin testified that Petitioner was very honest about his past, and that he had been one of his best deputies. He did not think the Triad incident should affect Petitioner's ability to work, that he had received no complaints about the truthfulness of Petitioner, and that Petitioner would be in line for promotion once this matter was resolved. Other co-workers attested to Petitioner's ability and truthfulness.

12. Character references were accepted into the record. In five letters of extraordinary and detailed praise, colleagues and parents associated with Falls Lake Academy explained Petitioner's value to the special students there, and their desire to keep him as a member of that community.

13. Capt. Knutson, while not vouching for Petitioner nor speaking in support of him, did testify that Petitioner received no complaints concerning his truthfulness while working with his Department, other than the CJETSC application.

14. As Deputy Core's offense is the failure to reveal an investigation that cleared him, rather than the allegation that caused it, a fair-minded assessment might reasonably conclude, as Sheriff Noblin has, that his praiseworthy service in law enforcement should continue.

15. The Respondent gave the Petitioner due notice of his right to a hearing in the Office of Administrative Hearings by letter dated March 31, 2021, and Deputy Core requested a hearing.

16. The Office of Administrative Hearings gave the parties due Notice of Hearing on August 26, 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 controversy. N.C. Gen. Stat. § 150B-40(e).

2. The North Carolina Respondent Sheriffs Education and Training Standards Commission has the authority, granted under Chapter 17C of the North Carolina General Statutes and Title 12, Chapter 10 of the North Carolina Administrative Code, to certify justice officers and to revoke, suspend, or deny such certification. N.C. Gen. Stat. §§ 17E-4(a)(3); 17E-9(a).

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.

5. Except as otherwise provided by statutes or by rules adopted pursuant to N.C. Gen. Stat. § 150B-38(h), the rules in Title 26, Chapter 3 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 case. 26 NCAC 03 .0101(d).

6. The subsections of 12 NCAC 10B .0204(c)(1) and .0204(c)(2) are not redundant.

State v. Coffey, <http://66.161.141.175/cgi-bin/texis/web/nccaselaw/bvindex.html?dn=289+N.C.+431&sid=51f8bf16bf89199d3a03ad4c5f5b4413> 289 N.C. 431, 222 S.E.2d 217 (1976) (“[A] statute should not be interpreted in a manner which would render any of its words superfluous.”); *Kyle v. Holston Group*, 188 N.C. App. 686, 692, 656 S.E.2d 667, 672 (2008) (“Our Supreme Court has applied the rules of statutory construction to administrative regulations as well as statutes.”). The rule makes a fine but important distinction between offenders who neglect the duty to disclose or completely answer the questions, and those who connive to “deceive” and “cheat”. The Petitioner’s error falls in the first category.

7. The Petitioner violated 12 NCAC 10B .0204(c)(1) when he sought and obtained criminal justice officer certification from the CJETSC while omitting disclosure of his employment with Triad Local Schools as a coach and substitute teacher.

8. The Respondent SETSC may deny the certification of a justice officer when the officer “has knowingly made a material misrepresentation of any information required for certification” by CJETSC. 12 NCAC 10B .0204(c)(1).

9. When extenuating circumstances brought out at an administrative hearing warrant, the Commission may substitute a period of probation in lieu of denial of certification. 12 NCAC 10B .0205(2).

10. 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).

11. 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 Respondent North Carolina Sheriffs' Education and Training Standards Commission grant the Petitioner Joshua Ryan Core certification, subject to a period of probation in the discretion of the Commission.

NOTICE

The agency that will make the final decision in this contested case is the **North Carolina Sheriffs' 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. Gen. Stat. § 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 the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714.

SO ORDERED.

This the 31st 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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Petitioner

NC Sheriffs Education and Training Standards Commission
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Raleigh NC 27602
Respondent

Robert J Pickett
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Attorney For Respondent

This the 31st day of May, 2022.



Daniel Chunko
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