

STATE OF NORTH CAROLINA
COUNTY OF CATAWBA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
22 DOJ 00289

<p>Irving Ray Conley Jr Petitioner,</p> <p>v.</p> <p>North Carolina Criminal Justice Education and Training Standards Commission Respondent.</p>	<p>PROPOSAL FOR DECISION</p>
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This case came on for hearing via WebEx on June 23, 2022, before Administrative Law Judge, David F. Sutton. 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: Irving Ray Conley, Jr., *pro se*
302 Springhill Lane
Maiden, North Carolina 28650

Respondent: Erika N. Jones
Attorney for Respondent
NC Department of Justice
Special Prosecutions/Law Enforcement Section
9001 Mail Service Center
Raleigh, North Carolina 27699-9001

ISSUE

Whether Petitioner's correctional officer certification should be suspended due to Petitioner's commission of a DAC misdemeanor as defined in 12 NCAC 09G .0102 after certification?

RULES AND STATUTE AT ISSUE

12 NCAC 09G .0102(10)(mmm)
12 NCAC 09G .0504(d)(3)
12 NCAC 09G .0505(b)(1)
N.C. Gen. Stat. § 20-166(c)(1)

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 FACT.

In making the FINDINGS OF FACT, the undersigned Administrative Law Judge has weighed all the evidence and has assessed the credibility of each witness 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.

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 denial letter, mailed by Respondent, the North Carolina Criminal Justice Education and Training Standards Commission (hereinafter "The Commission"), on December 6, 2021.

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 under appropriate circumstances with valid proof of a rule violation.

3. Petitioner was granted probationary certification with the Division of Adult Correction ("DAC") on February 8, 2016. Petitioner received his general certification on February 10, 2017. (Resp. Ex. 1)

4. On December 29, 2020, Petitioner was issued a citation for Failing to Stop at a Duly Erected Stop Sign in violation of N.C. Gen. Stat. §20-158(b)(1) and Failing to Stop Vehicle Involved in Collision with Property Damage in violation of N.C. Gen. Stat. § 20-166(c)(1). (Resp. Ex. 2)

5. Petitioner's citation stemmed from Petitioner failing to stop at a stop sign, traveling off the roadway, and striking a fence. Petitioner then fled the scene on foot. Trooper C.L. Locklear of the North Carolina State Highway Patrol made contact with Petitioner the following day. (Resp. Ex. 2)

6. The North Carolina Department of Public Safety ("NCDPS") initiated an internal investigation and Petitioner completed a written statement on March 5, 2021. Petitioner stated that after leaving work on December 28, 2020, he went to visit a friend. On his way home from the

friend's house, Petitioner dozed off and struck a fence post totaling Petitioner's vehicle. Petitioner stated he did not remember getting out of his vehicle and walking home. (Resp. Ex. 3)

7. On June 30, 2021, NCDPS issued Petitioner a Written Warning for Unacceptable Personal Conduct which stated, "The fact that, by your own admission, you violated basic traffic rules by failing to stop at a stop sign which resulted in an accident and then proceeded to walk away from the scene of that accident demonstrates a willful violation of known or written work rules and constitutes unacceptable personal conduct." (Resp. Ex. 4)

8. Petitioner's criminal charges were dismissed on July 13, 2021 after Petitioner presented a letter indicating his insurance company had paid for the property damage. (Resp. Ex. 2, 5)

9. On November 18, 2021, the Commission's Probable Cause Committee reviewed Petitioner's case based on the allegation that Petitioner committed a DAC misdemeanor as defined in 12 NCAC 09G .0102 and the Committee found probable cause to suspend Petitioner's correctional officer certification for not less than three years. (Resp. Ex. 6, 7)

10. Petitioner was notified of the Probable Cause Committee's decision by a letter dated December 6, 2021 sent via certified mail. (Resp. Ex. 7)

11. At the administrative hearing, Petitioner testified that on the night of the collision, he went to visit a friend who lived about 45 minutes from Alexander Correctional where Petitioner had just finished working a shift. Petitioner testified that after spending about an hour at the friend's house, Petitioner headed home which was 5-10 minutes away. Petitioner testified that he dozed off during the short drive home and struck a fence. Petitioner denied consuming any alcohol on the night of the collision.

12. Petitioner further testified that when he woke up the morning after the collision, he was going to get breakfast but discovered his car was gone so he called the police. Petitioner stated he did not remember walking home after the collision although the walk would've been about a mile on a cold, December night. Petitioner stated he may have hit his head during the collision.

13. Petitioner testified that he had no bruises, cuts, or scrapes the morning after the collision and he did not seek any medical attention because he was not hurt.

14. Petitioner denied telling Trooper Locklear and the owner of the fence, Annie Cordos, that he left the scene because he was afraid.

15. However, Petitioner admitted that he initially denied being involved in a collision when confronted by Trooper Locklear but eventually agreed to come in for an interview after Trooper Locklear threatened to contact DAC.

16. Petitioner testified that leaving the scene of the collision was a mistake.

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.
3. 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. Charlotte v Heath, 226 N.C. 750, 755, 40 S.E.2nd 600, 604 (1946).
4. 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).
5. The administrative law judge shall decide the case based upon the preponderance of the evidence. N.C.G.S. § 150B-34(a).
6. 12 NCAC 09G .0504(d)(3) allows the Commission to suspend, revoke, or deny the certification of a corrections officer if the officer has committed or been convicted of a misdemeanor as defined in 12 NCAC 09G .0102 after certification.
7. 12 NCAC 09G .0102(10)(mmm) states, "Misdemeanor offenses for corrections officers are classified by the Commission as the following as set forth in G.S. or other state or federal law: (mmm) 20-166(c) Duty to stop in the event of accident or collision."
8. N.C.G.S. § 20-166(c)(1) states, "The driver of any vehicle, when the driver knows or reasonably should know that the vehicle which the driver is operating is involved in a crash which results in only damage to property shall immediately stop the vehicle at the scene of the crash."
9. Petitioner's testimony that he fell asleep during the 5-10 minute drive home, struck a fence post, and does not remember walking a mile to get home on a cold, winter night is not credible in light of the other evidence presented including Petitioner being unhurt the following morning and Petitioner denying his involvement in the collision until the trooper threatened to contact DAC.
10. A preponderance of the evidence presented at the administrative hearing establishes that Petitioner violated 12 NCAC 09G .0504(d)(3) when he committed a misdemeanor as defined in 12 NCAC 09G .0102, specifically N.C.G.S. § 20-166(c)(1), when he failed to stop and remain at the scene of a collision involving property damage.
11. The finding of probable cause by the Respondent's Probable Cause Committee was supported by substantial evidence and the finding was not arbitrary, capricious, or an abuse of discretion.

12. Pursuant to 12 NCAC 09G .0505(b)(1), when the Commission suspends or denies a correctional officer's certification pursuant to 12 NCAC 09G .0504 of this Section, the period of sanction shall not be less than three (3) years.

PROPOSAL FOR DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby proposed that Petitioner's correctional officer certification be **SUSPENDED FOR THREE (3) YEARS**.

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.

IT IS SO ORDERED.

This the 1st day of September, 2022.

A handwritten signature in blue ink that reads "David F. Sutton". The signature is written in a cursive style and is positioned above a solid blue horizontal line.

David F Sutton
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:

Irving Ray Conley Jr.
302 Springhill Lane
Maiden NC 28650
Petitioner

Erika N Jones
NC Department of Justice
enjones@ncdoj.gov
Attorney for Respondent

This the 1st day of September, 2022.



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