

STATE OF NORTH CAROLINA
COUNTY OF CATAWBA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
22 DOJ 00290

Chad Alan Lail Petitioner, v. North Carolina Criminal Justice Education and Training Standards Commission Respondent.	PROPOSAL FOR DECISION
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This case came on for hearing on July 21, 2022, before Administrative Law Judge, David F. Sutton, in Lincolnton, North Carolina. 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: William L. Hill
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Respondent: Erika N. Jones
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ISSUE

Whether Petitioner's criminal justice officer certification should be suspended for not less than five (5) years due to Petitioner's commission of a Class B Misdemeanor as defined in 12 NCAC 09A .0103(24)(b)?

RULES AND STATUTES AT ISSUE

12 NCAC 09A .0103(24)(b)
12 NCAC 09A .0204(b)(3)(A)
12 NCAC 09A .0205(b)(1)
N.C. Gen. Stat. §14-230

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 suspension letter, mailed by Respondent, the North Carolina Criminal Justice Education and Training Standards Commission (hereinafter "The Commission"), on December 6, 2021. (R. Ex. 10)

2. The Commission has the authority granted under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 09A, to certify criminal justice officers and to revoke, suspend, or deny such certification under appropriate circumstances with valid proof of a rule violation.

3. Petitioner was first certified on November 2, 2010 as an officer with the Lincolnton Police Department ("PD"). Petitioner separated from Lincolnton PD on April 23, 2021. Petitioner is currently seeking certification with the Catawba Valley Medical Center PD. (R. Ex. 6)

4. On March 8, 2021, a multi-agency meeting was held at Hickory PD. The purpose of the meeting was to address a recent string of catalytic converter thefts in the area and the use of N.C. Gen. Stat. § 66-424 to target buyers of stolen catalytic converters. Two detectives from Lincolnton PD, one of which was Petitioner, attended the meeting. (R. Ex. 1)

5. 18-20 people attended the March 18, 2021 meeting which lasted between 1.5-2 hours. An Excel spreadsheet was presented during the meeting which listed individuals who might be involved as "cutters" or "buyers" of the catalytic converters.

6. The Excel spreadsheet contained the names of Petitioner's father, Todd Lail, and a close family friend of Petitioner, Joe McCann. Petitioner's father's name, Todd Lail, was highlighted in yellow as one of the main targets who were buying stolen catalytic converters. (R. Ex. 1)

7. On March 30, 2021, Hickory PD Sergeant Jeff Medley called Lincoln PD Lieutenant Dennis Harris, to express concern about information possibly being leaked from the multi-agency meeting held on March 8, 2021. The day after the March 8, 2021 meeting, the thefts suddenly stopped. (R. Ex. 1)

8. The day after the multi-agency meeting, Petitioner emailed Hickory PD Criminal Analyst Shelly Davis and told her he wanted to be removed from the catalytic converter task force due to a conflict of interest. Petitioner did not provide any details about the conflict of interest. (R. Ex. 1)

9. On April 1, 2021, Lincoln PD Lieutenant Dennis Harris - a 28 year law enforcement veteran - and Captain Brian Greene - a 29 year law enforcement veteran - served Petitioner with notice he was being placed under internal investigation. After receiving the notice, Petitioner stated, "I told my dad" and "I tried to take myself off of it." (Testimony of Petitioner, Det. Harris, Capt. Greene) (R. Exs. 1, 2)

10. On April 13, 2021, Mike Miller - District Attorney for Cleveland and Lincoln Counties - emailed Lincoln PD Chief Rodney Jordan and stated, "Based on what I have been told, I cannot state that a crime has been committed. And if it had, there is no evidence that it was committed in Lincoln County. I am not saying that criminal activity has not taken place, but I have not been presented with facts to support that assumption." (P. Ex. 2)

11. District Attorney Miller's email to Chief Jordan does not indicate that DA Miller was informed that Petitioner admitted to providing sensitive information from the multi-agency meeting to his father and family friend. Rather, it appears that DA Miller was advised that one of the taskforce targets was Petitioner's father, Petitioner told someone he had a conflict of interest, and that the catalytic converter thefts stopped after the multi-agency meeting. (P. Ex. 2)

12. DA Miller's email to Chief Jordan was sent prior to Petitioner submitting a written statement and being interviewed by Internal Affairs. Consequently, DA Miller's email sent on April 13, 2021 to Chief Rodney Jordan was before the conclusion of Lincoln PD's internal investigation and the email is not dispositive of whether Petitioner committed a criminal offense by providing sensitive information from the multi-agency meeting to his father and a family friend.

13. On April 14, 2021, Petitioner was interviewed by Lincoln PD Lieutenant Dennis Harris after being read his Garrity Rights. Petitioner admitted to calling his father from his patrol vehicle soon after the multi-agency meeting and telling him they were going to start charging people that were buying catalytic converters from individuals and not businesses. Petitioner also told his father that his name and Joe McCann's name were on "the list." Petitioner also admitted

to calling Joe McCann and telling him about the new enforcement actions and his name being on the list. (Testimony of Petitioner and Det. Harris) (R. Ex. 1)

14. Petitioner submitted a written statement to Lincolnton PD Lieutenant Harris in which he admitted to telling his father about the list and future enforcement strategies that would be utilized under the statute. Petitioner stated he did not think it was right to charge people with a crime without warnings nor anyone to explain the law. Petitioner stated, "As Law Enforcement Officers we have a duty to inform and educate the public on new laws and the best practices on how to follow the law." (R. Ex. 7)

15. On April 15, 2021, Lincolnton PD Lieutenant Dennis Harris concluded his investigation and two policy violations were sustained against Petitioner for "providing sensitive police information to his father Todd Lail and Joe McCann" and for conduct unbecoming due to Petitioner's actions compromising an ongoing investigation and the relationship between several agencies. (R. Ex. 1)

16. Lincolnton PD Captain Brian Greene recommended Petitioner be terminated. In his written recommendation to Lincolnton PD Chief Rodney Jordan, Capt. Greene stated that Petitioner "told not one but two persons of interest that they were being targeted by a taskforce that had been formed to combat the thefts. His choice to reveal the information hurts the reputation of the Lincolnton Police Department as well as every other officer that works for the Lincolnton Police Department. Some of these agencies may never trust officers of the Lincolnton Police Department again." (R. Ex. 2)

17. On April 19, 2021, Petitioner was notified that termination was being recommended but a pre-disciplinary conference was being scheduled for April 21, 2021 at which time Petitioner would be allowed to respond to the allegations against him. (R. Ex. 4)

18. On April 23, 2021, Lincolnton PD Chief Rodney Jordan – a 27 year law enforcement veteran - notified Petitioner that he was being terminated effective immediately. (R. Ex. 5)

19. The Affidavit of Separation Law Enforcement Officer (Form F-5B) submitted to the Commission by the Lincolnton PD indicates Petitioner was dismissed due to Petitioner contacting his father and Joe McCann and telling them "they were named in the Multi-Agency meeting which may have compromised multiple agency's criminal cases." (R. Ex. 3)

20. On November 18, 2021, Criminal Justice Standards Division Investigator Kevin Wallace presented Petitioner's case to the Commission's Probable Cause Committee ("the Committee"). The Committee found probable cause to suspend Petitioner's certification for not less than five (5) years for Commission of a Class B Misdemeanor. (R. Exs. 9, 10)

21. At the administrative hearing, Petitioner testified that when he saw his father's name on the list during the multi-agency meeting, he immediately realized there was a conflict of interest. When questioned on why he did not leave the meeting when he realized there was a

conflict, Petitioner stated it would have been awkward for him to leave in the middle of the meeting. (Testimony of Petitioner)

22. Davis testified that she believed Petitioner's actions jeopardized the task force's investigation and Petitioner should have excused himself from the meeting as soon as he learned he had a conflict of interest. (Testimony of Davis)

23. Petitioner further testified that he called his father 15-30 minutes after leaving the multi-agency meeting while sitting in his patrol vehicle. Petitioner testified he called Joe McCann, whom Petitioner has known his entire life, later in the day once Petitioner was off-duty. (Testimony of Petitioner)

24. Petitioner testified he did not provide any details about the conflict of interest to Hickory PD Criminal Analyst Shelly Davis when he asked her to remove him from the taskforce because he did not believe she needed any details. (Testimony of Petitioner)

25. Lincolnton PD Sergeant Tiffany Cline was Petitioner's supervisor at the time of the multi-agency meeting, and she requested that Petitioner attend the meeting. After the meeting, Petitioner approached Sgt. Cline and told her that his father was mentioned during the meeting and that he was going to contact him. Sgt. Cline did not tell Petitioner not to contact his father after the meeting. (Testimony of Petitioner and Sgt. Cline)

26. However, Petitioner did not notify Sgt. Cline that his father was mentioned as a possible suspect in the catalytic converter thefts. On cross-examination, Sgt. Cline testified that if Petitioner had told her that his father was mentioned as a possible suspect in the catalytic converter thefts, she would have responded differently when Petitioner stated he was going to contact his father (i.e. Sgt. Cline would have discouraged Petitioner from contacting his father if she knew his father was a suspect in the thefts under investigation). (Testimony of Sgt. Cline)

27. At the administrative hearing, Petitioner testified that he only contacted his father and a close family friend. Petitioner maintains that he contacted them because it is wrong to charge people with a crime they do not know exists. Petitioner also maintains he did nothing wrong and he did not willfully fail to discharge duties. (Testimony of Petitioner)

28. On cross-examination, Petitioner was asked to read aloud the oath he took when he was sworn in with Lincolnton PD on November 15, 2011. The oath reads in part, "I, Chad Alan Lail, DO SOLEMNLY SWEAR (OR AFFIRM) THAT I WILL BE ALERT AND VIGILANT TO ENFORCE THE CRIMINAL LAWS OF THIS STATE; THAT I WILL NOT BE INFLUENCED IN ANY MATTER ON ACCOUNT OF PERSONAL BIAS OR PREJUDICE." Petitioner's oath also states, "...AND THAT I WILL FAITHFULLY AND IMPARTIALLY DISCHARGE AND EXECUTE THE DUTIES OF MY OFFICE AS A LAW ENFORCEMENT OFFICER ACCORDING TO THE BEST OF MY SKILL, ABILITIES AND JUDGMENT." (Testimony of Petitioner)

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.2d 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. The Commission may suspend, revoke, or deny the certification of a criminal justice officer when the Commission finds that the applicant for certification or the certified officer has committed or been convicted of a criminal offense or unlawful act defined in 12 NCAC 09A .0103 as a Class B Misdemeanor. 12 NCAC 09A .0204(b)(3)(A).

7. “Class B Misdemeanor” means an act committed or omitted in violation of any common law, criminal statute, or criminal traffic code of this State that is classified as a Class B Misdemeanor as set forth in the Class B Misdemeanor Manual as published by the North Carolina Department of Justice, incorporated herein by reference, and shall include any later amendments and editions of the incorporated material as provided by N. C. Gen. Stat. § 150B-21.6. 12 NCAC 09A .0103(24)(b).

8. N.C. Gen. Stat. § 14-230 states, “If any...official of any of the State institutions, or of any county, city or town, shall willfully omit, neglect or refuse to discharge any of the duties of his office, for default whereof it is not elsewhere provided that he shall be indicted, he shall be guilty of a Class 1 misdemeanor.”

9. A duly appointed policeman of a city is an officer within the meaning of N.C. Gen. Stat. § 14-230. State v. Fesperman, 264 N.C. 168, 141 S.E.2d 252 (1965).

10. Petitioner took an oath not to be influenced in any matter on account of personal bias or prejudice and to faithfully and impartially discharge and execute his duties as a law enforcement officer.

11. Petitioner’s statement that he called his father and a close family friend because he has a duty as a law enforcement officer to inform and educate the public on new laws is not credible because the law discussed during the multi-agency meeting (N.C.G.S. 66-424) was not a new law. Moreover, Petitioner did not seek to educate the general public about the law and future

enforcement strategies. Petitioner only sought to inform his father and a close family friend he had known his entire life.

12. Rather than immediately leaving the multi-agency meeting upon learning he had close family and friends involved in the investigation, Petitioner remained for the entirety of the meeting. Minutes after the meeting concluded and while still on-duty, Petitioner shared sensitive information from the meeting with his father and a family friend. Petitioner only had access to this sensitive information due to his status as a law enforcement officer.

13. Petitioner's actions in providing this sensitive information outside the law enforcement community and tipping off his father and a close family friend jeopardized a multi-agency investigation and created distrust between these agencies. Petitioner's actions were influenced by personal bias and partiality.

14. A preponderance of the evidence presented at the administrative hearing establishes that Petitioner violated 12 NCAC 09A .0204(b)(3)(A) when he committed a Class B misdemeanor as defined in 12 NCAC 09A .0103(24)(b), specifically N.C. Gen. Stat. § 14-230, when he willfully failed to discharge duties by providing sensitive information he learned from a multi-agency meeting to his father and a close family friend thereby jeopardizing a multi-agency investigation.

15. The finding of probable cause by the Commission's Probable Cause Committee was supported by substantial evidence and the finding was not arbitrary, capricious, or an abuse of discretion.

16. When the Commission suspends or denies the certification of a criminal justice officer for the Commission of a Class B Misdemeanor, the period of sanction shall be not less than five (5) years. However, the Commission may reduce or suspend the period of sanction or substitute a period of probation in lieu of suspension of certification, or impose a combination of these on a case-by-case basis following a consent order or administrative hearing. 12 NCAC 09A .0205(b)(1).

PROPOSAL FOR DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby proposed that Petitioner's law enforcement officer certification be **SUSPENDED FOR FIVE (5) 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.

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).

IT IS SO ORDERED.

This the 29th day of September, 2022.



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:

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This the 29th day of September, 2022.



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