

STATE OF NORTH CAROLINA  
COUNTY OF CLEVELAND

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
24 DOJ 00710

JESLYNN RYAN HILL, )  
)  
Petitioner, )  
)  
v. )  
)  
NORTH CAROLINA SHERIFFS' )  
EDUCATION AND TRAINING )  
STANDARDS COMMISSION, )  
)  
Respondent. )  
\_\_\_\_\_ )

EXCEPTIONS

The following **Exceptions** to the **Proposal for Decision** prepared by the Honorable Jonathan S. Dills, Administrative Law Judge, and filed in the Office of Administrative Hearings on July 25, 2024, are hereby submitted to the North Carolina Sheriffs' Education and Training Standards Commission for consideration in its Final Agency Decision.

1. Counsel has made minor typographical and grammatical changes as necessary to make the proposal appropriate for Final Agency Decision.
2. Finding of Fact No. 8 should be revised for clarity.  
  
8. Following this traumatic event, she leaned on her then supervisor, Donald Bivens. Their relationship became personal and eventually ~~turbulent~~ romantic.
3. Finding of Fact No. 10 should be revised for clarity.  
  
10. Petitioner suggested transparency ~~re~~ about their relationship, but Bivens discouraged it.
4. Finding of Fact No. 11 should be deleted as superfluous. All remaining paragraphs should be renumbered to reflect proper sequential numbering of paragraphs.  
  
~~11. By all accounts, Bivens was a schmuck; though notably, he was not present to defend himself.~~
5. Finding of Fact No. 15 (formerly #16) should be revised to include additional information concerning the court disposition of Petitioner's charges.  
  
15. On 22 August 2023, Petitioner pled to one count of injury to personal property. She was placed on unsupervised probation, fined, and assigned community service. The remaining charges of injury to personal property

and injury to real property were dismissed. (R Ex 5).

6. Finding of Fact No. 25 (formerly #26) should be revised to accurately reflect the current procedural posture of the case.

25. The Administrative Law Judge found the following Extenuating circumstances existed include: (1) Petitioner had an unhealthy relationship with the male *victim* who shared some culpability; (2) has good leadership support; (3) was forthright, honest, and accepted responsibility; (4) fully complied with her sentence; (5) was remorseful; (6) voluntarily sought counseling; (7) has abstained from alcohol; and (8) has overcome significant adversity.

7. Conclusion of Law Nos. 2 and 3 should be revised to reflect the Commission's position regarding the burden of proof. All remaining paragraphs should be renumbered to reflect proper sequential numbering of paragraphs.

2. Though Article 3A of the APA is silent re the applicable standard of evidence, it is undisputedly by preponderance. In re Rogers, 297 N.C. 48, 59, 253 S.E.2d 912, 919 (1979).

3. As the Tribunal has repeatedly concluded, the State generally bears the burden of proof when it proposes to restrict certification. See, Russell v. Commission, 2022 NC OAH LEXIS 55; cf., Graves v. Commission, 2022 NC OAH LEXIS 374 (new applicant); see also, Canty v. Commission, 2014 NC OAH LEXIS 127. These analyses are incorporated by reference. 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). The administrative law judge shall decide the case based upon the preponderance of the evidence. N.C.G.S. § 150B-34(a). Petitioner has the burden of proof in the case at bar. Overcash v. N.C. Dep't. of Env't & Natural Resources, 172 N.C. App 697, 635 S.E. 2d 442 (2006).

2. While N.C. Gen. Stat. § 150B-40 enumerates the powers of the presiding officer, including an Administrative Law Judge in Article 3A cases, such statute does not address which party has the burden of proof in an Article 3A contested case hearing. Neither has the North Carolina Constitution nor the General Assembly addressed the burden of proof in Article 3A cases. However, the Commission has consistently held that Petitioner has the burden of proof in the case at bar as does a petitioner in an Article 3 case. Overcash v. N.C. Dep't. of Env't & Natural Resources, 179 N.C. App 697, 635 S.E.2d 442 (2006) (stating that "the burden of proof rests on the petitioner challenging an agency decision").

8. Proposal for Decision should be revised to reflect the final decision of the Commission as follows:

**PROPOSAL FOR DECISION ORDER**

~~WHEREFORE, certification is GRANTED, conditioned upon (1) a two year period of probation, (2) during which time she will remain alcohol free, and (3) her compliance with reasonable monitoring by leadership at her employer.~~

WHEREFORE, Petitioner's justice officer certification is should be GRANTED, conditioned upon (1) a two-year period of probation during which it is highly recommended that, (2) during which time she will remain alcohol free, and the Rutherford County Sheriff's Office or any other employing entity closely monitor her progress and performance (3) her compliance with reasonable monitoring by leadership at her employer.

This the 23<sup>rd</sup> day of August, 2024.

JOSHUA H. STEIN  
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COUNSEL TO THE COMMISSION

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a copy of the foregoing **EXCEPTIONS** has been duly served upon **Petitioner** by mailing a copy to the address below:

**Jeslynn Ryan Hill  
3667 Polkville Road  
Shelby, North Carolina 28150**

This the 23<sup>rd</sup> day of August, 2024.

JOSHUA H. STEIN  
Attorney General

/s/ J. Joy Strickland  
J. Joy Strickland  
Assistant Attorney General  
ATTORNEY FOR THE COMMISSION