

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
24 DOJ 00311

<p>Latoya Shaunice Melton Petitioner,</p> <p>v.</p> <p>NC Sheriffs Education and Training Standards Commission Respondent.</p>	<p>PROPOSED DECISION</p>
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THIS MATTER PRESENTS under authority of the North Carolina Constitution, Art. 3, Sec. 11, *accord*, Art. IV, Sec. 3; G.S. 7A-750; and G.S. 150B (“APA”); following *hearing on the merits* before Jonathan S. Dills, Administrative Law Judge (“ALJ”) with the Office of Administrative Hearings (“OAH”); for proposed decision per Art. 3A of the APA.

The ALJ must sit for the agency, establish facts, apply law, and issue proposal. G.S. 150B-40(e).

APPEARANCES

Petitioner: Latoya Shaunice Melton, *pro se*

Respondent: J. Joy Strickland, Assistant Attorney General
Department of Justice

ISSUE

Whether justice officer certification should be denied to Petitioner.

ANSWER: Certification should be allowed, conditionally.

FINDINGS¹

BASED UPON careful consideration and deliberation of the entire record; having weighed all the evidence, and assessing the credibility of each witness; the undersigned finds as follows:

1. Both parties are properly here in that jurisdiction and venue are lawful, Respondent (a/k/a the “Commission”) gave notice of agency action on 23 October 2023, Petitioner timely requested OAH appeal, and the Tribunal legally noticed hearing. (R’s Exs 6-7).

¹ The Tribunal need only find facts material to resolution. *Flanders v. Gabriel*, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612, *aff’d*, 335 N.C. 234, 436 S.E.2d 588 (1993).

2. Respondent appears in its delegated role of oversight and maintenance of minimum standards for criminal justice officer certification. G.S. 17E-4(a)(6) & 7(c).

3. Petitioner is an applicant for certification as a detention officer with the Mecklenburg County Sheriff's Office. Her appointment date was 29 June 2022. (R's Ex #1).

4. Investigator Melissa Bowman testified at hearing. She is employed by the Department of Justice and has worked with Respondent for about two years.

5. Bowman testified that applications for certification through Respondent involve review of information contained in a database shared between law enforcement commissions, to determine *inter alia* inconsistencies.

6. A standard review of Petitioner's application revealed that she was previously certified as a correctional officer through the North Carolina Division of Adult Correction (DAC). In that position, Petitioner was granted certification on 22 March 2022. Petitioner separated from employment with DAC on 25 June 2022. (R's Ex #2).

7. Also revealed were inconsistencies between the prior Personal History Statement (Form F-3) and Respondent's corresponding paperwork (Form F-5A). Commission staff typically scrutinizes *inter alia* drug use and/or criminal activity.

8. The Form F-3 has two questions regarding drug use:

40. Have you ever used any illegal drugs including but not limited to marijuana, synthetic or designer drugs, steroids, opiate, pills, heroin, cocaine, crack, LSD, etc., to include even one time use or experimentation?

[Petitioner answered YES and provided the following:]

Marijuana 10/2021-10/2021/ Last usage 10/2021

Ecstasy 02/2010-02/2010/ I used one time at a party in 02/2010 (Last usage)

42. Have you ever purchased, possessed, manufactured, grown, delivered or sold any amount of illegal drugs or controlled substances for which you did not have a valid prescription?

[Petitioner answered YES and provided the following:]

I purchased both marijuana and ecstasy.

Marijuana 10/2021-10/2021

Ecstasy 02/2010-02/2010

(R's Ex #3).

9. The Form F-3 is a sixteen-page document containing fifty-seven inquiries, used to “fully and adequately evaluate applicants for justice officer certification.” (R’s Ex #1, cover page).
10. Petitioner signed the Form F-3 before a notary on 12 May 2022. (R’s Ex #3, p. 15).
11. The Form F-5A has a question with subparts regarding drug use:

3. Answer the following questions concerning illegal drug use:

- (a) Have you ever used (to include tasking) any illegal drugs including but not limited to marijuana, steroids, opiates, pills, heroin, cocaine, crack, LSD, designer or synthetic drug, etc., to include even one time use or experimentation?

- (c) Have you ever purchased, possessed, manufactured, grown, or delivered any amount of illegal drugs?

- (d) Have you ever purchased, possessed, sold or delivered any amount of a controlled substance, notwithstanding purchasing and possessing a controlled substance for which you have a valid prescription?

Petitioner answered NO for each of these subparts. (R’s Ex #4, p. 1).

12. The Form F-5A is a more cursory document with nine inquiries on five pages.
13. Petitioner signed the Form F-5A before a notary on 11 February 2021. (R’s Ex #4, p. 5).
14. The Form F-5A contains the following language, in pertinent part, above the signature line:

I hereby certify that each and every statement made on this form ... is true and complete.... I further understand and agree that any omission, falsification, or misrepresentation of any factor or portion of such information can be the sole basis for termination of my employment and/or denial, suspension or revocation of my certification....

(R’s Ex #4, p. 5).

15. During review/investigation, Petitioner was offered the chance to provide a statement and she provided the following dated 16 June 2022:

On 2021 appointment form (F-5A) with DOC, I answered “NO” on question three. At the time of filling out the form I was not using illegal drugs. After being employed, I experimented with illegal drugs. When applying I completed the F3 for the Sheriff’s Office. I then answered “Yes.”

(R’s Ex #5).

16. Also dated 16 June 2022, Petitioner appended her Form F-5A with the following:

I have used ecstasy one time on 02/2010. I used the drug at a party, given to me by a peer. I only used the drug one time on 02/2010.

(R's Amended Ex # 3, p. 8.5).

17. For the omission of ecstasy use on the Form F-5A, this matter was presented to Respondent's Probable Cause Committee. It found sufficient cause to deny Petitioner certification for violating 12 NCAC 10B .0204(c)(1) & (2).

18. Petitioner did not attend the Probable Cause meeting notwithstanding prior notification via certified mail. (R's Ex #6).

19. Petitioner testified at the hearing. She explained that no one assisted her with the Form F-5A. At the time, she had not used marijuana and forgot the ecstasy. She completed the form in February 2021 but did not use marijuana until October 2021.

20. Petitioner admitted that her answers to question 3 on the Form F-5A were inaccurate because she had used ecstasy before. She said it was not intentionally omitted. Describing the experience, Petitioner said she tried it once at a party in 2010; it made her "heart beat out of her chest" and feel "panicky;" it scared her, so she never did it again and tried to put it out of mind.

21. Petitioner testified that when she completed the Form F-3, a recruiter assisted her, and she was given more time to consider the paperwork.

22. Regarding the two written statements she provided, the first one was intended to address her ecstasy use and the second was regarding marijuana use. Someone with the Mecklenburg County Sheriff's Office in Professional Compliance advised her in this regard.

23. Petitioner did not attend the probable cause committee conference because she moved and did not receive actual notice. When shown a copy of the comparable notice provided to her employer, she said it was never mentioned.

24. Petitioner admitted that her errors appear deceptive, but such was not intentional. She is proud of her time with DAC and proud now to be a deputy.

CONCLUSIONS²

1. Respondent is authorized to certify law enforcement officers and to revoke, suspend, or deny certification in proper circumstances. G.S. 17E; 10 NCAC 10B.

² To the extent Findings contain Conclusions or vice versa, they should be appropriately considered regardless of labeling. *Charlotte v. Heath*, 226 N.C. 750, 755, 440 S.E.2d 600, 604 (1946).

2. Though Article 3A of the APA is silent regarding 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; *Graves v. Commission*, 2022 NC OAH LEXIS 374. For further reference, see *Canty v. Commission*, 2014 NC OAH LEXIS 127. These analyses are incorporated by reference.
4. Regardless, a preponderance of the evidence demonstrates Petitioner violated 12 NCAC 10B .0204(c)(1).
5. Accordingly, Respondent's actions to date, were just and proper.
6. Due to extenuating circumstances, including a) the admission(s) of responsibility, b) that Petitioner was twenty years old at occurrence, c) the subject event was eleven years prior to the first application, and d) that no one assisted with the problem paperwork; the Court recommends a reduction of sanction as proposed below. 12 NCAC 10B .0205(2) (discretion); *cf.* 12 NCAC 10B .0204(c) ("may" presents choice).
7. This ruling is based upon a preponderance of credible evidence after full hearing. There is substantial evidence justifying adoption of the Tribunal's proposal. G.S. 150B-42.

PROPOSAL

BASED ON the foregoing, Respondent should issue reprimand, grant certification, and prescribe a two-year period of probation beginning from final decision.

NOTICE

The agency captioned and addressed herein will make the final decision in this contested case. G.S. 150B-38 *et seq.* (Art.3A).

The parties must be given opportunity in advance "to file exceptions and proposed findings of fact and to present oral and written arguments to the agency." G.S. 150B-40(e).

The agency or its counsel will timely file a copy of the final decision referencing the case number specified herein with the Office of Administrative Hearings.

ORDERED 15th May 2024.



The Honorable Jonathan S. Dills
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 by electronic service as defined in 26 NCAC 03 .0501(4) and/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 which thereafter places the foregoing document into an official depository of the U.S. Postal Service, as follows:

Latoya Shaunice Melton
3715 Eastover Ridge Drive Apt 1301
Charlotte NC 28211
Petitioner

J. Joy Strickland
NC Department of Justice
jstrickland@ncdoj.gov
Attorney For Respondent

This the 15th day of May, 2024.

Karen L Rust

Karen L Rust
Law Clerk
N. C. Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, NC 27609-6285
Phone: 984-236-1850