

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
24 DOJ 00311

LATOYA SHAUNICE MELTON,)
)
 Petitioner,)
)
 v.)
)
NORTH CAROLINA SHERIFFS')
EDUCATION AND TRAINING)
STANDARDS COMMISSION,)
)
 Respondent.)
_____)

**PROPOSAL FOR FINAL
AGENCY DECISION**

THIS MATTER was commenced by a request filed 26 January 2024, with the Director of the Office of Administrative Hearings for the assignment of an Administrative Law Judge. Notice of Contested Case Assignment and Order for Prehearing Statements (24 DOJ 00311) were filed 29 January 2024. The parties received proper Notice of Hearing and the Administrative Hearing was held in Concord, North Carolina on 6 May 2024, before the Honorable Jonathan S. Dills, Administrative Law Judge.

The Petitioner represented herself, *pro se*. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter the Commission or Respondent) was represented by Assistant Attorney General J. Joy Strickland.

On 15 May 2024, Judge Dills filed his Proposal for Decision. On 21 May 2024, counsel to the Commission sent by certified mail a copy of the Proposal for Decision to the Petitioner with a letter explaining Petitioner's rights: (1) to file exceptions or proposed findings of fact; (2) to file written argument; and (3) the right to present oral argument to the Commission.

This matter came before Commission for entry of its **Final Agency Decision** at its regularly scheduled meeting on 19 September 2024.

Having considered all competent evidence and argument and having reviewed the relevant provisions of Chapter 17E of the North Carolina General Statutes and Title 12, Chapter 10B of the North Carolina Administrative Code, the Commission, based upon clear, cogent and convincing evidence, does hereby make the following:

FINDINGS¹

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).

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~~ were properly before the assigned Administrative Law Judge here ~~in that~~ and jurisdiction and venue are lawful. Respondent (a/k/a the "Commission") gave notice of agency action on 23 October 2023. Petitioner timely requested an OAH appeal, and the assigned Administrative Law Judge Tribunal legally noticed hearing. (R's Exs 6-7).

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).~~

~~19-18.~~ 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.

~~20-19.~~ 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.

~~21-20.~~ Petitioner testified that when she completed the Form F-3, a recruiter assisted her, and she was given more time to consider the paperwork.

~~22-21.~~ 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.

~~23-22.~~ 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.

~~24-23.~~ 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. 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. The party with the burden of proof in a contested case must establish the facts required by N.C. Gen. Stat. §150B-23(a) by a preponderance of the evidence. N.C. Gen. Stat. §150B-29(a). The administrative law judge shall decide the case based upon the preponderance of the evidence. N.C. Gen. Stat. §150B-34(a).~~

4. 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”).

~~4.5.~~ Regardless, a preponderance of the evidence demonstrates Petitioner violated 12 NCAC 10B .0204(c)(1).

~~5.6.~~ Accordingly, Respondent’s actions to date, were just and proper.

~~6.7.~~ 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).

~~7.8.~~ 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 ORDER

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).

BASED ON the foregoing Findings of Fact and Conclusions of Law, it is hereby **ORDERED** that Petitioner's justice officer certification be **GRANTED**, Petitioner be provided with a **WRITTEN REPRIMAND**, and be placed on a period of **PROBATION** for **TWO (2) YEARS**, during which she shall not violate any State or federal law or Commission Rules. ~~Respondent should issue reprimand, grant certification, and prescribe a two-year period of probation beginning from final decision.~~

IT IS SO ORDERED.

This the _____ day of _____, 2024.

Chairman
North Carolina Sheriffs' Education and
Training Standards Commission

CERTIFICATE OF SERVICE

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

**Latoya Shaunice Melton
3715 Eastover Ridge Drive, Apt. 1301
Charlotte, North Carolina 28211**

This the 23rd day of August, 2024.

JOSHUA H. STEIN
Attorney General

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