

STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
23 DOJ 05110

KEVIN EDMOND,)
)
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 September 9, 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 and renumbered the Conclusions of Law as there appeared to be a typo in the filed Proposed Decision.
2. Findings of Fact #5-6 should be amended as follows to include additional stipulated facts:
 5. Petitioner accepted assignment at LT Apparel for 24 February 2023, from 12:00am to 8:00am. Petitioner was paid for this entire 8-hour shift. Petitioner left LT Apparel at 6:07am. (Stip 4f).
 6. Petitioner accepted assignment at LT Apparel for 25 February 2023, from 12:00am to 8:00am. Petitioner was paid for this entire 8-hour shift. Petitioner left LT Apparel at 7:21am. (Stip 4g).
3. Findings of Fact #9 should be amended as follows to correctly reflect additional facts:
 9. Petitioner was ~~significantly punished~~ disciplined with three-years of probation, suspension without pay, reassignment, no off-duty, no overtime, no promotion, and reimbursement of \$120.00 to LT Apparel. (T p 73).

4. Findings of Fact #10 should be amended as follows to correctly reflect the evidence:

10. Respondent also investigated after receiving an improvident Giglio notice. (T pp 11, 45-49, 116-118; R Ex 3; Stip 4j).

5. Findings of Fact #15 should be amended as follows to correctly reflect additional facts:

15. Brooke Mahoub testified for Extra Duty Solutions. She supervised the questioned assignments. She explained the procedures and expectations relative to same. Ms. Mahoub testified that when an off-duty assignment is available for the Guilford County Sheriff's Office, a notification would be provided to the officers at that department. Ms. Mahoub explained that her company allows law enforcement officers to assign themselves to available off duty assignment either using an online portal on a computer or an application that can be installed on the officer's phone. Once assigned to a shift, the officer will receive an alert through the application to check in for the shift. The officer is expected to check out at the end of the shift. Ms. Mahoub explained that officers are paid on a biweekly basis meaning they are paid for a two-week period of off duty assignments. She explained that officers are required to verify their hours. If the officer fails to verify their hours, they will not be paid. The system allows officers to modify the hours worked. (T pp 21-22, 23).

6. A new Findings of Fact paragraph #19 should be added to reflect additional facts and the remaining paragraphs will be renumbered accordingly:

19. On both occasions that Petitioner was interviewed he mentioned that the only reason he would leave the premises would be to get gas. Specifically, he said the following: Petitioner said OK, I remember leaving and going to get gas and coming back and later he said so I don't know what day it was. In addition, Petitioner said "one time I went and got gas and I came back so I don't know if it was the 24th or the 25th.... I believe I left on one of those days and got gas and came back, yes sir." Petitioner later said, "I know I didn't leave at six and then not come back." I wouldn't left a job two hours early period maybe 30 minutes, maybe 15 minutes, 7 minutes but I wouldn't left a job two hours early."(Respondent' Exhibit #4)

7. Findings of Fact #20 should be amended as follows to correctly reflect additional facts:

20. ~~The video was unavailable at hearing. Testimony about it was mostly hearsay.~~ Captain Cox explained that each employee of the Guilford County Sheriff's Office is provided with a gas card to use to purchase fuel for their work vehicles. The card is assigned specifically to an individual's vehicle and is associated with each employee's identification number. As part of the internal investigation, the records regarding Petitioner's fuel purchases were obtained. The gas records show Petitioner

purchased gas on 24 February 2023 at 9:17 PM which is prior to his off-duty shift assignment starting at 12:00 AM. The fuel records reflect Petitioner did not purchase gas with his fuel card any other time on 24 February 2023 or 25 February 2023. (Respondent's Exhibit #6) (T pp 38-39, 43)

8. Findings of Fact #21 should be amended as follows to correctly reflect the evidence:

~~21. At hearing, Petitioner agreed that he did not complete the subject shifts. He was nervous and confused but did his best to concede what his superiors concluded from the video. (T p 53).~~

9. The original Findings of Facts #23 and #26 should be deleted as they are not consistent with the evidence presented:

~~23. The Undersigned agrees with Petitioner that these missteps are out of character for him and expects he can and will do better moving forward. (T pp 55, 73).~~

~~26. The Sheriff's Office prefers Petitioner stay and redeem himself. The undersigned concurs with Sheriff Rogers who was directly involved and meted sufficient consequences. (T pp 108, 112).~~

10. The Conclusions of Law #3 has been amended as follows and #4 - #5 have been deleted to reflect the Commission's position regarding the burden of proof:

3. Though Art. 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). 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. 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 (new applicant). For further reference, see Canty v. Commission, 2014 NC OAH LEXIS 427. These analyses are incorporated by reference.~~

~~5. Regardless, to any extent the burden was Petitioner's, he carried it; to any extent it was Respondent's, it failed. Harris v. Mangum, 183 N.C. 235, 239-40, 11 S.E. 177, 179 (1922) (summarizing the interplay of burden, participant roles, and a decision by preponderance of the probative evidence regardless of who successfully~~

introduced it or when).

11. New Conclusion of Law #6, #18, #21-24 should be amended and/or deleted and new paragraphs 18-21 should be added as follows to reflect the proper conclusions to be drawn from the evidence:

~~6. There is insufficient evidence to establish the requisite *mens rea*. Indeed, the credible evidence of the case affirmatively disproved intent *to wit* by design. See *Harris, supra*.~~

~~18. There is insufficient evidence of moral turpitude. Indeed, the totality of credible evidence demonstrates current, good moral character. See *Harris, supra*.~~

~~21. Hearsay is subject to discount or disregard. 26 NCAC 03 .0122; NCRE, Rule 803;c 26 NCAC 03 .0122(3) (referenced evidence must be available for consideration).~~

~~22. The ALJ determines credibility. *Brithaven of Morganton v. DHR*, 118 N.C. App. 379, 388, 455 S.E.2d 455, 462-3, disc. rev. denied, 341 N.C. 418, 461 S.E.2d 754 (1995).~~

~~23. “[D]eciding which permissible inference to draw from evidentiary circumstances is as much within the fact finder’s province as is deciding which of two contradictory witnesses to believe.” *Halloway v. Tyson Foods, Inc.*, 193 N.C. App. 542, 548, 668 S.E.2d 72, 76 (2008).~~

~~24. The determinations of the undersigned are based upon a preponderance of the credible evidence, after full hearing and significant deliberation. Substantial evidence justifies adoption of the following proposal. G.S. 150B-42.~~

18. The evidence at the hearing supports the finding of the Respondent that Petitioner committed the felony offense of Obtaining Property by False Pretenses in violation of N.C.G.S § 14-100 on or about 24 February 2023 and 25 February 2023 and that Petitioner lacks the good moral character required of a justice officer.

19. The Court considered whether the facts of this case constituted the mere “nonfulfillment” of a contract obligation, to wit: Petitioner assigned himself to two shifts for a term of eight hours that he did not fulfill. The Respondent finds that the evidence presented was more than the nonfulfillment of a contract obligation. Based on the testimony of Ms. Mahoub and Petitioner, the Extra Duty Solutions program required Petitioner to verify his hours at the end of his shift or sometime prior to the end of the two-week pay period in order to be paid. Petitioner had to proactively go onto the application in order to verify his hours. According to his testimony, he never left any off-

duty work assignment early, other than the two shifts in question in this case. If that were true, Petitioner would have known when he verified his hours that he had not completed the shift, therefore he obtained property by false pretenses. His reimbursement of the \$120.00 to Extra Duty Solutions is corroboration of the evidence that he was not entitled to full payment.

20. Petitioner lacks good moral character based upon the commission of two counts of the offense of obtaining property by false pretenses during officially sanctioned off duty assignments and his deception during the internal investigation. Petitioner's failure to provide an explanation of his behavior during the hearing also contributes to this finding. This pattern of behavior spanning from February 2023 to the present supports the decision of the Respondent, that Petitioner currently lacks good moral character.

21. While Petitioner remains employed by the Guilford County Sheriff's Office, no member of that office testified in support of Petitioner. Petitioner's evidence of letters of commendation and a receipt of the Rookie of the Year in 2021, which all occurred prior to the events at issue, is insufficient to overcome the substantial evidence in the record that Petitioner lacks good moral character. In addition to the specific finding that Petitioner lacks good moral character, the Court finds that Petitioner has not presented any evidence to show that he has rehabilitated his character at this time.

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

PROPOSAL ORDER

BASED ON the foregoing, Petitioner's certification is **REVOKED** permanently for the commission of the felony offense of obtaining property by false pretenses and for an indefinite period for lacking the good moral character required of a justice officer ~~should NOT be REVOKED.~~

This the 15th day of October 2024.

JOSHUA H. STEIN
Attorney General

/s/ J. Joy Strickland

J. Joy Strickland
Assistant Attorney General
N.C. Department of Justice
9001 Mail Service Center
Raleigh, North Carolina 27699-9001
Telephone: (919) 716-6401
State Bar No.: 25695
COUNSEL TO THE COMMISSION

CERTIFICATE OF SERVICE

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

Donovan John Hylarides
Wyatt Early Harris Wheeler LLP
192 Eastchester Drive, Suite 400
High Point, North Carolina 27265

This the 15th day of October 2024.

JOSHUA H. STEIN
Attorney General

Attorney General

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