

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.)
_____)

PROPOSED FINAL AGENCY
DECISION

THIS MATTER was commenced by a request filed December 8, 2023, 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 (23 DOJ 05110) were filed December 11, 2023. The parties received proper Notice of Hearing, and the Administrative Hearing was held in High Point, North Carolina on May 29, 2024, before the Honorable Jonathan S. Dills, Administrative Law Judge.

The Petitioner was represented by counsel, Donovan John Hylarides. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter the Commission or Respondent) was represented by Assistant Attorney General J. Joy Strickland.

On September 9, 2024, Judge Dills filed his Proposal for Decision. 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 November 21, 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:

FINDINGS OF FACT¹

1. Petitioner is accused of committing a felony and lacking requisite character in effort to revoke his justice officer certification. (See pleadings; Ex 7).

2. Petitioner has been continuously certified since 2015. He previously worked for the Elizabeth City Police Department, Elizabeth City State University Police, Lee County Sheriff's Office, and Alamance Community College Police Department. He currently works at the Guilford County Sheriff's Office. (R Ex 2; Stip 4c).

3. Petitioner has held certification as a Guilford County Deputy Sheriff since 17 April 2021. (Stip 4a&b).

4. Petitioner often and routinely worked off-duty assignments. These were managed through a third-party vendor, Extra Duty Solutions. (Stip 4d&e). There is no history of off-duty problems beyond the following two shifts.

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).

7. Someone reported that Petitioner may not have fully worked those shifts. (T p 42).

8. The Sheriff's Office investigated and confronted Petitioner. Petitioner was initially confused and in denial. Presented with security video and accusation of superiors, he ultimately conceded what he came to believe the video demonstrated. (Stip 4h; T p 53).

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).

10. Respondent also investigated after receiving an ~~improvident~~ Giglio notice.² (T pp 11, 45-49, 116-118; R Ex 3; Stip 4j).

11. Respondent thereafter found probable cause to believe that Petitioner

¹ The Tribunal need only find facts material to resolution. *Flander 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 ~~The Giglio notice was flawed/untrue, but both parties agreed this immaterial to the dispute.~~ (T pp 116-118).

committed the felony of obtaining property by false pretenses, and thereby, lacked good moral character. (R Ex 7).

12. Petitioner was sufficiently notified of proposed revocation. (Stip 3&4k; R Ex 7).

13. Petitioner objected and timely appealed ~~here~~. (Stip 3&4l; R Ex 8).

14. Melissa Bowman, an investigator with Respondent, testified primarily from the internal investigation documents. (T pp 11, 14-15; R Ex 3).

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 21-24)

16. Captain Elizabeth Cox of the Guilford County Sheriff's Office, testified re their internal investigation. (T pp 34-36; R Ex 5).

17. Petitioner was first interviewed on 09 March 2023. In that interview, Petitioner stated, "I have no intentions from stealing time from anybody" and "my intentions is to never steal any time from the county or any of those vendors that I do work." (R Ex 4).

18. _____ Petitioner was last interviewed on 20 April 2023, during which he was shown portions of the security video from LT Apparel. (R Ex 4).

~~18.~~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)

~~19-20. 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)~~

~~20-21. 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).~~

~~21-22. There are two competing interpretations of this case following Petitioner's testimony: a) He intended to lie and steal, arguably bolstered by incongruity between his testimony of concession and memory; or b) He balanced respect for his superior's judgment against memory, which interpretation was supported by his credibility, history, and tendencies. The Undersigned finds in line with the latter.~~

~~22-23. The ALJ Tribunal determined that Petitioner is culpable, but only for inadvertence due to inattention and exhaustion. Specifically, there was no intent to deceive. (T pp 53,73, 77-8).~~

~~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).~~

~~24. However, the credible evidence does not support a determination that Petitioner committed the offense of obtaining property by false pretenses accused and that (relatedly) Petitioner lacks good moral character. See Conclusions No. 8 & 20, incorporated here by reference~~

~~25. Petitioner presented documents of accommodation and appreciation for exceptional work. Petitioner was the 2021 rookie of the year. (T pp 84-86; R Ex 9).~~

~~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).~~

CONCLUSIONS OF LAW³

³ 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).

1. Respondent has authority of establishment, oversight, and maintenance of *minimum* standards for criminal justice officer certification. G.S. 17E-4 & 4.1; 12 NCAC 10B .0301.

2. Respondent is authorized to certify law enforcement officers and to revoke, suspend, or deny certification in proper circumstances. 12 NCAC 10B .0204 (*cf.* Stip 2).

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 127. 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).~~

Felony Allegedly Committed, Not Convicted

~~6.4. 12 NCAC 10B .0204(a)(1) requires revocation if Petitioner is determined to have committed or been convicted of a felony. 12 NCAC 10B .0205(1)(a) requires that such revocation be permanent.⁴~~

~~7.5. G.S. 14-100 (emphasis added) provides:~~

~~(1) If any person shall *knowingly and designedly* by means of any kind of false~~

⁴There is question of whether the Commission has authority to permanently revoke certification based solely upon commission. *Cf.* G.S. 17E (mentioning only convictions); 12 NCAC 10B .204(a)(1) (adding commission); & the fundamental/constitutional right of citizens to the “fruits of their own labor....” Address is unnecessary for decision.

pretense whatsoever, ... obtain or attempt to obtain from any person⁵ within the state any money ... or other thing of value with *intent* to cheat or defraud ..., such person shall be guilty of a felony....

(2) Evidence of nonfulfillment of a contract obligation *standing alone* shall not establish the essential element of *intent* to defraud.

~~8.6.~~ 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.~~

Moral Character

~~9.7.~~ Every criminal justice officer shall *be* of good moral character, as defined by caselaw. 12 NCAC 10B .0301(12). At issue is Petitioner's current character. *Id.*

~~10.8.~~ 12 NCAC 10B .0204(b)(2) requires revocation, denial, or suspension when a justice officer fails to meet or maintain minimum standards to include good moral character.

~~11.9.~~ 12 NCAC 10B .0205(3)(b) requires that such revocation, denial, or suspension continue indefinitely, or for "so long as the stated deficiency, infraction, or impairment" persists.

~~12.10.~~ The purpose is not to punish a candidate but to protect the public and preserve integrity. *In re Legg*, 325 N.C. 658, 673, 386 S.E.2d 174, 182 (1989).

~~13.11.~~ The term good moral character is unusually ambiguous. *Konigsberg v. State*, 353 U.S. 252, 262-63 (1957).

~~14.12.~~ Due to concerns about flexibility and vagueness, certification restriction based on moral turpitude must be judiciously applied. *In re Willis*, 288 N.C. 1, 15, 215 S.E.2d 771, 780 (1975), *appeal dismissed*, 423 U.S. 976 (1975).

~~15.13.~~ Acts of moral turpitude are described to involve "baseness, vileness, or depravity." *Dew v. State ex rel. N.C. Dep't of Motor Vehicles*, 127 N.C. App. 309, 311, 488 S.E.2d 836, 837 (1997) (internal quotations and citation omitted).

~~16.14.~~ It may be defined as "[c]onduct that is contrary to justice, honesty, or morality." Black's Law Dictionary, 1101 (9th ed. 2009); *cf. and contrast, In re Willis, supra* at 10, 215 S.E.2d at 775-77 (1975) ("honesty, fairness, and respect for the rights of others and for the law....").

⁵ Any "person" encompasses bodies politic and/or business entities. G.S. 14-100(c).

17-15. Isolated instances are seldom sufficient. See *In Re Rogers*, 297 N.C. 48, 58, 253 S.E.2d 912, 918 (1979).

18-16. Only severe conduct may serve as a basis for moral turpitude. *Devalle v. N.C. Sheriffs' Educ. & Training Standards Comm'n*, 289 N.C. App. 12, 28, 887 S.E.2d 891, 901 (2023).

19-17. In absence of mandate, we resort to "policy, fairness and common sense." *Peace v. Employment Sec. Comm'n of N. Carolina*, 349 N.C. 315, 328, 507 S.E.2d 272, 281 (1998). Judiciousness and a standard of obvious and severe transgression, in this sense, are akin.

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.

20-19. 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.

24-20. 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.

Miscellaneous

~~21. Hearsay is subject to discount or disregard. 26 NCAC 03 .0122; NCRE, Rule 803; e 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.~~

~~**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**.~~

IT IS SO ORDERED.

This the 22nd day of November 2024.

Alan Norman, 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'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

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