

STATE OF NORTH CAROLINA
COUNTY OF CLEVELAND

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
24 DOJ 02400

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| Lynn Burns Slycord Petitioner, v. NC Sheriffs Education and Training Standards Commission Respondent. | PROPOSAL FOR DECISION |
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This case came on for hearing on December 5, 2024, before Administrative Law Judge David F. Sutton in Morganton, North Carolina. This case was heard after Respondent requested, pursuant to N.C.G.S. § 150B-40(e), designation of an Administrative Law Judge to preside at the hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes.

APPEARANCES

Petitioner: Lynn Slycord, *pro se*
Respondent: J. Joy Strickland
Attorney for Respondent

RULES AT ISSUE

12 NCAC 10B .0204(d)(3)
12 NCAC 10B .0205(3)(d)

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge makes the following FINDINGS OF FACT.

In making the FINDINGS OF FACT, the undersigned Administrative Law Judge weighed all the evidence and assessed the credibility of the witnesses by taking into account the appropriate facts for judging credibility, including, but not limited to, the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences, about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

FINDINGS OF FACT

1. Petitioner applied for telecommunicator certification through Respondent, the North Carolina Sheriffs' Education and Training Standards Commission, on June 8, 2022, for a position with the Kings Mountain Police Department. (Respondent's Exhibit #1)

2. Melissa Bowman, Investigator with the Sheriffs' Standards Division, testified in this hearing and explained that when a person applies for certification, that an application packet is submitted by the agency. The packet includes various documents including the Form F-3, Personal History Statement.

3. When Petitioner completed the Personal History Statement, Form F-3, she included information concerning her prior criminal history including that she had been convicted of four counts of failing to file income taxes. (Respondent's Exhibit #2)

4. Included with her application materials, was information from the Cleveland County Clerk of Court's office detailing the following four convictions:

09 CR 51962 Petitioner was charged with failing to file income taxes for an offense date of January 31, 2008. Conviction date: June 16, 2009.

09 CR 51963 Petitioner was charged with failing to file income taxes for an offense date of April 30, 2008. Conviction date: June 16, 2009.

09 CR 51964 Petitioner was charged with failing to file income taxes for an offense date of July 31, 2008. Conviction date: June 16, 2009.

09 CR 51965 Petitioner was charged with failing to file income taxes for an offense date of January 31, 2009. Conviction date: June 16, 2009. (Respondent's Exhibit #3)

5. Also included with her application materials, was a typewritten statement explaining what led to the charges and convictions. Petitioner testified consistent with her statement. Petitioner operated a day care facility. During that time, her husband became an addict and began taking money out of her accounts and concealing paperwork related to her business. Due to financial difficulties from this situation, Petitioner was not able to pay her taxes or afford an accountant to assist her. Prior to court, Petitioner was able to pay the taxes she owed and was placed on unsupervised probation. (Respondent's Exhibit #4)

6. At the conclusion of Investigator Bowman's investigation, the matter was presented to the Probable Cause Committee of the Sheriffs' Commission.

7. The committee found probable cause to believe that Petitioner's certification should be denied for her conviction of four or more Class B Misdemeanors of failing to file income tax in violation of N.C.G.S. §105-236 and in violation of 12 NCAC 10B .0204(d)(3). Written notification of the finding of probable cause was provided to Petitioner in a certified letter dated May 8, 2024. (Respondent's Exhibit #5)

Petitioner's Evidence

8. Petitioner testified on her own behalf at the hearing of this matter. She started as a telecommunicator with Kings Mountain in 2016. She has also held the position of 911 supervisor and is currently the 911 coordinator for the police department. Her current position does not require her to be certified but she would like to be certified as an example to those she supervises.

9. Since receiving the probable cause letter, Petitioner obtained an expungement of the four convictions. (Petitioner's Exhibit #1)

10. Chief Childress of the Kings Mountain Police Department testified on behalf of Petitioner. He described Petitioner as one of the greatest employees he has ever supervised. He had no hesitation to testify on her behalf. In addition to doing her job well, Petitioner has taken on extra responsibility for projects such as implementing a new CAD system for the patrol division and taken on IT functions. He considers her an expert in her field.

CONCLUSIONS OF LAW

1. The parties were properly before the undersigned Administrative Law Judge and jurisdiction and venue are proper. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in this matter.

2. To the extent that the Findings of Facts contain Conclusions of Law, or that the Conclusions or Law are Findings of Fact, they should be so considered without regard to the given labels. *Charlotte v. Heath*, 226 N.C. 750, 755, 40 S.E.2d 600, 604 (1946); *Peters v. Pennington*, 210 N.C. App. 1, 15, 707 S.E.2d 724, 735 (2011).

3. N.C. Gen. Stat. §150B-40(e) provides that “[w]hen a majority of an agency is unable or elects not to hear a contested case,” the agency is to apply to the Office of Administrative Hearings (“OAH”) for a designation of an Administrative Law Judge (“ALJ”). In such case, “[t]he provisions of [Article 3A], rather than the provisions of Article 3, shall govern a contested case...” N.C. Gen. Stat. §150B-40(e).

4. In Article 3A cases, OAH, through an ALJ, presides over the hearing in place of the agency, and makes a “proposal for decision” back to the agency. N.C. Gen. Stat. §150B-40.

5. In *Peace v. Employment Sec. Comm'n of N. Carolina*, 349 N.C. 315, 328, 507 S.E.2d 272, 281 (1998), the North Carolina State Supreme Court addressed the burden of proof. Although *Peace* is an Article 3 case, the discussion of burden of proof is instructive in this instant case. *Peace* states:

In the absence of state constitutional or statutory direction, the appropriate burden of proof must be “judicially allocated on considerations of policy, fairness and common sense.” 1 Kenneth S. Broun, Brandis & Broun on North Carolina Evidence §37 (4th . Ed. 1993). Two general rules guide the allocation of the burden of proof outside the criminal contest: (1) the burden rests on the party who asserts the affirmative, in substance rather than form;

and (2) the burden rests on the party with peculiar knowledge of the facts and circumstances. *Id.*

6. Neither the North Carolina Constitution nor the General Assembly has addressed the burden of proof in Article 3A cases. Applying the statutory law along with “considerations of policy, fairness and common sense,” the Undersigned determines that Respondent should bear the burden of proof in an action where Respondent proposes to deny an individual’s justice officer certification based upon its investigation into that individual.

7. The burden of proof is the preponderance of the evidence standard. See N.C. Gen. Stat. §§ 150B-23(a); 29(a); and 34(a).

8. The evidence at the hearing supports the finding of the Respondent that Petitioner was convicted of four counts of failing to file income taxes in violation of N.C.G.S §105-236.

9. 12 NCAC 10B .0204(d)(3) provides that:

The Commission may revoke, suspend or deny the certification of a justice officer when the Commission finds that the . . . certified officer has committed or been convicted of:

four or more crimes or unlawful acts defined in 12 NC AC 10B .0103(17)(b) as Class B misdemeanors regardless of the date of Commission or conviction.

10. 12 NCAC 10B .0103(17)(b)(i) defines Class B Misdemeanor, in pertinent part, as follows: an act committed or omitted in violation of any common law, criminal statute, or criminal traffic code of this state which is classified as a Class B Misdemeanor as set forth in the "Class B Misdemeanor Manual" as published by the North Carolina Department of Justice and shall automatically include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6. . .

11. The Respondent’s Class B Misdemeanor Manual includes N.C.G.S. §105-236(9), failing to file income taxes. (Respondent’s Exhibit # 7)

12. The sanction for the conviction of four or more Class B Misdemeanors is contained in 12 NCAC 10B .0205(3)(d) which provides that:

When the Commission suspends, revokes, or denies the certification of a justice officer, the period of sanction shall be . . . For an indefinite period, but continue so long as the stated deficiency, infraction, or impairment continues to exist, where the cause of sanction is Commission or conviction of offenses as specified in 12 NCAC 10B .0204(d)(2)(3)(4) and (5).

13. 12 NCAC 10B .0205(3) further states that:

The Commission may either reduce or suspend the periods of sanction under this Item or substitute a period of probation in lieu of revocation, suspension, or denial following an

administrative hearing. This authority to reduce or suspend the period of sanction may be utilized by the Commission when extenuating circumstances brought out at the administrative hearing warrant such a reduction or suspension.

14. The preponderance of the evidence produced during this contested case hearing demonstrates that Petitioner was convicted of four counts of failing to file income taxes in violation of N.C.G.S. §105-236.

15. The findings of the Respondent's Probable Cause Committee were not arbitrary or capricious.

PROPOSAL FOR DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby proposed that Petitioner's justice officer certification should be **GRANTED** due to the circumstances surrounding the convictions, Petitioner's admission of responsibility, Petitioner's lengthy work history, support of the Kings Mountain Police Department and their recognition of her expertise in the telecommunication field.

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this Proposal for Decision, to submit proposed Findings of Fact, and to present oral and written arguments to the agency. N.C.G.S. § 150B-40(e).

The agency that will make the final decision in this contested case is the North Carolina Sheriffs' Education and Training Standards Commission.

A copy of the final agency decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency and a copy shall be furnished to any attorney of record. N.C.G.S. § 150B-42(a).

SO ORDERED.

This the 21st day of January, 2025.

A handwritten signature in cursive script that reads "David F. Sutton". The signature is written in black ink and is positioned above a solid horizontal line.

David F Sutton
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 at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), 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 subsequently will place the foregoing document into an official depository of the United States Postal Service:

Lynn Burns Slycord
143 Ole Farm Place
Kings Mountain NC 28086
Petitioner

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

This the 21st day of January, 2025.

Melissa Boyd

Melissa Boyd
Paralegal
N. C. Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, NC 27609-6285
Phone: 984-236-1850