

STATE OF NORTH CAROLINA
COUNTY OF CLEVELAND

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
24 DOJ 00705

TIMOTHY KIMBRELL,)
)
 Petitioner,)
)
 v.)
)
 NORTH CAROLINA SHERIFFS')
 EDUCATION AND TRAINING)
 STANDARDS COMMISSION,)
)
 Respondent.)
 _____)

**PROPOSED FINAL AGENCY
DECISION**

THIS MATTER was commenced by a request filed February 26, 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 00705) were filed February 27, 2024. The parties received proper Notice of Hearing, and the Administrative Hearing was held in High Point, North Carolina on July 22, 2024, before the Honorable Jonathan S. Dills, Administrative Law Judge.

The Petitioner was represented by counsel Garland Franklin Byers Jr. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter the Commission or Respondent) was represented by Assistant Attorney General J. Joy Strickland.

On November 7, 2024, Judge Jonathan S. Dills filed his Proposal for Decision. On November 7, 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 March 20, 2025.

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 FACT

1. Both parties ~~are~~ were properly before the Tribunal. (Ex. 8 & 9).
2. Respondent ("Commission") appears in its delegated role of oversight and maintenance of minimum standards for justice officer certification. G.S. 17E-4(a)(6) & 7(c).
3. Petitioner has been in law enforcement for seven years, having worked as a canine officer, a school resource officer, an animal control officer, and patrol officer. (T pp 112-114).
4. Petitioner is currently a Detention Officer with the Rutherford County Sheriff's Office ("RCSO").
5. Petitioner previously worked for RCSO and twice with the Forest City Police Department ("FCPD"). Id. This dispute involves the just prior employment with FCPD.
6. FCPD provided deputies with MiFi® devices for portable, work-related internet access. They were subject to check out. ~~however, there was minimum stricture and oversight.~~ (T pp 29-30; 98-101).
7. It was as much as a year before anyone noticed the missing devices. It appeared that at least one device was never recovered. (T p 142; Ex. 7).
8. Leadership noticed several units were out and unlogged. Word was sent to everyone for them to be returned. (T pp 32-35; 98-101).
9. Petitioner returned one such device and admitted to using it personally. (Ex. 7).
10. Internal Affairs was involved and investigated. Petitioner was interviewed. Id. Petitioner admitted that he had one of the devices but initially downplayed for how long. (Ex. 6).
11. The subject actions violated FCPD procedures and standards. (Ex. 10).
12. Following the incident, Petitioner voluntarily separated from FCPD. Id.
13. At hearing, Petitioner was ultimately, credible and conciliatory. (T pp 142).
14. The Commission learned of the subject malfeasance from the Report of Separation from RCSO. (Ex. 3). It investigated and referred the matter to committee. (Ex. 5 & 7).

15. Ultimately, the Commission determined probable cause to believe Petitioner lacks the requisite moral character required of a justice officer. (Ex. 8).

16. Petitioner timely appealed here. (See Petition).

17. Mitigating factors, to any extent relevant, include:

- a. Seven years in Law Enforcement (T pp 112-114).;
- b. An otherwise, relatively unblemished career (T p 146);
- c. ~~Petitioner's admissions and accountability (Eg. T pp 142);~~
- d. ~~Financial and familial pressures (T p 126);~~
- e. c. Support from the Sheriff of Rutherford County (T pp 105-109);
- f. d. Support from other leadership at RCSO (T pp 90-92); and
- g. ~~That this was ultimately an internal, employment issue.~~

~~18. This was an isolated incident of poor judgment.~~

~~19. These circumstances certainly do not justify revocation.~~

CONCLUSIONS OF LAW

1. Respondent is authorized to certify Petitioner; and to revoke, suspend, or deny such in proper circumstances. G.S. 17E; 12 NCAC 10B.

2. 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).

~~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; cf., Graves v. Commission, 2022 NC OAH LEXIS 374 (new applicant); see also, 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. ~~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). 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").—

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

6. 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.

7. 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.

8. 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).

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

10. 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).

11. 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).

12. 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....").

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

14. *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).

15. In absence of clear 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.

~~16. There is insufficient evidence of moral turpitude. Indeed, the totality of credible evidence demonstrates current, good moral character. *Harris*, supra.~~

~~17. 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).~~

~~18. “[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.” Holloway v. Tyson Foods, Inc., 193 N.C. App. 542,548, 668 S.E.2d 72, 76 (2008).~~

19. 16. Nonetheless, the decision of the Respondent’s Probable Cause Committee was not arbitrary or capricious.

~~20. The determinations of the Undersigned are based upon a preponderance of the credible evidence, after full hearing and significant deliberation.~~

~~21. Substantial evidence justifies adoption of the following proposal. G.S. 150B-42.~~

PROPOSAL FOR DECISION

~~WHEREFORE, Respondent should not revoke Petitioner's certification.~~

ORDER

It is hereby ordered that the Petitioner's justice officer certification is revoked for an indefinite period.

This the ___ day of March 2025.

Alan Norman, Chair
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:

**Timothy Kimbrell
110 Walker Street
Forest City, NC 28043**

This the 23rd day of December 2024.

JOSHUA H. STEIN
Attorney General

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