

STATE OF NORTH CAROLINA
COUNTY OF CLEVELAND

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
24 DOJ 00711

JOSHUA ANDREW PHILLIPS,)
)
 Petitioner,)
)
 v.)
)
 NORTH CAROLINA SHERIFFS')
 EDUCATION AND TRAINING)
 STANDARDS COMMISSION,)
)
 Respondent.)
 _____)

**PROPOSED FINAL AGENCY
DECISION**

THIS MATTER was commenced by a request filed February 21, 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 00711) were filed February 27, 2024. The parties received proper Notice of Hearing, and the Administrative Hearing was held in Winston Salem, North Carolina on August 26, 2024, before the Honorable Jonathan S. Dills, Administrative Law Judge.

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

On December 13, 2024, Judge Jonathan S. Dills filed his Proposal for Decision. On December 23, 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

1. The parties are were properly here before the Administrative Law judge in that venue is was appropriate; upon adequate notice, Petitioner timely appealed, and the trial held; and no party has otherwise maintained objection.

2. Petitioner was previously certified as a Detention Officer with the Cleveland County Sheriff's Department ("CCSD") on 06 September 2018. (R Ex 1). He went to inactive status in January of 2019.

3. Petitioner was a certified EMT with Rutherford County from approximately July 2021 to April 2022. He was terminated for testing positive in a random drug screen. (R Ex 3 & 9).

4. Following termination, Petitioner applied to CCSD and Shelby PD. He is currently employed as a Deputy Sheriff with CCSD, which is well aware of this proceeding.

5. Respondent received a Report of Appointment (Form F-4) from CCSD. (R Ex 2). Respondent routinely gathered documents, made comparisons, and investigated irregularities.

6. Respondent found probable cause to believe that Petitioner lacked the good moral character we require of law enforcement, because he:

- a. Was untruthful re his termination and positive drug test;
- b. Obfuscated within key employment/certification paperwork;
- c. Tested positive for marijuana;
- d. Admitted to using unprescribed hydrocodone; and
- e. Provided hydrocodone to a family member.

(R Ex 10).

7. On the Shelby PD paperwork, Petitioner stated the reason for leaving his EMT position was to "pursue another career opportunity." (R Ex 5). He also explained his separation as pursuit of "what I really want to do." (R Ex 6).

8. Petitioner admitted to a history of marijuana and hydrocodone use, explaining the later was for a back injury indicating he obtained the medication that was leftover from his wife's oral surgery. Id.

9. Shelby PD interviewed Petitioner who repeated past marijuana and hydrocodone use. They soon learned of his positive drug test and termination. (Cf. R Ex 8 & 9).

10. On the CCSD paperwork, Petitioner similarly admitted some past marijuana and hydrocodone use. He further admitted to giving some Hydrocodone to a cousin. (Cf. R Ex 3).

11. In the aforementioned paperwork, Petitioner's statements about the timing and amount of his drug use made it seem like drug use was further in the past than he admitted to at the hearing. Additionally at the hearing, Petitioner admitted to baking a batch of marijuana brownies for his sick wife in 2018, using hydrocodone in 2020-2021, and testing positive for marijuana metabolites in 2022. See paperwork, supra

12. Petitioner was similarly evasive regarding where he obtained the who's hydrocodone he had wrongly used. Ultimately, he admitted at trial that it was his aunt's and not his wife's. (T p 116).

13. The administrative law judge found the following Mitigating factors include, without limitation:

- a. Honorable service in the U.S. Marine Corps;
- b. His past and no longer present health issues;
- c. History of losing his wife and the mother of their two children, to cancer;
- d. Current and exemplary employment with CCSD, which indicates preference of continuing employment;
- e. His more recent marriage and commitment to all his children, to include several that were adopted; and
- f. His seeming gain and maintenance of a stabilized life.

14. Letters of reference on Petitioner's behalf were offered and accepted. (P Ex 1-4).

15. The administrative law judge opined that this is a close case, with substantial evidence supporting and opposing revocation. The administrative law judge also noted his Undersigned is concerned with the timing and significance of Petitioner's drug history, as well as his initial reluctance to admit malfeasance. Ultimately though, he was truthful at hearing. Based on the totality of the evidence in this case, it appears that Petitioner was embarrassed about the positive drug test result while with Rutherford County EMS and was concerned that potential employers including the Shelby Police Department would not hire him because of the test so he listed incomplete answers to questions about his separation. In addition, Petitioner relied on "rushing" as to why he included inconsistent answers on his application materials concerning drug use. That explanation is not credible in light of the evidence presented. Instead, it appears Petitioner was trying to minimize his drug use over time and make it appear that his use was not in the recent past.

16. Deference is allowed to the decision making of our High Sheriffs, who are often best placed to determine the competence and character of their deputies.

17. Petitioner has provided a variety of reasons for his separation from Rutherford County EMS. Clearly, Rutherford County terminated Petitioner's employment. Ms. Giles was very clear in her testimony that during the initial conversation she told Petitioner that he had been placed on investigatory suspension with pay. She did not recall him saying that he was quitting and if he had said that it would have been unnecessary for her to

send a termination letter.

Summary of Discrepancies for Reason for Leaving Rutherford County:

- a. F-3 with Cleveland County Sheriff's Office- Resigned at the beginning of the year from Rutherford County EMS for delta 8. Paperwork completed the day after he was interviewed by Shelby PD and told that Rutherford County EMS reported he had been terminated.
- b. F-3 with Shelby Police Department- to "pursue what I really want to do."
- c. City of Shelby Employment Application- to "pursue another career opportunity."
- d. Request for hearing-indicated that he advised the OPS manager that he quit and was not coming back.

Petitioner indicating on his certification forms and application with the Shelby Police Department that he had resigned for a variety of reasons was inaccurate and untruthful, as was information he provided in the request to begin this administrative hearing process.

18. Regarding drug use, Petitioner indicated in his application for the Cleveland County Sheriff's office and in his request hearing in this case that he obtained hydrocodone from his aunt, used some of that and gave some pills to his cousin. On his application material for the Shelby Police Department, he indicated that he obtained the medication from what was leftover from when his wife had oral surgery. Petitioner provided different time frames for when he used marijuana on the F-3s and during his testimony admitted to purchasing marijuana in 2018 which had been left off both forms.

Summary of Discrepancies Regarding Drug Use:

- a. F-3 with Cleveland County Sheriff's Office- marijuana 15 times at social functions in home period last used years ago. D8 legal one year ago one vape pen over a month. Hydrocodone 5 milligrams 5 to 10 times approximately 3 to four years ago. I have procured hydrocodone for my cousin from my family member to give to him.
- b. F-3 with Shelby Police Department- marijuana 16 years ago before enlistment and from high school to join the military, hydrocodone (three to five times) hurt my back and took what was left. Marijuana 16 years ago. Hydrocodone 7 years ago. 5 hydrocodone hurt my back at work and instead of going to the doctor, my wife had some leftover medicine from an oral surgery and I used one to two a day for two weekdays for work.

- c. Request for administrative hearing in this matter-Said that he was injured from work and his cousin said that his aunt had medications and he went to his aunt's house and obtained hydrocodone.
- d. At trial-Petitioner said that he purchased marijuana for his wife for the pain she was suffering from cancer. He said he used the marijuana to make hash butter for brownies.

Petitioner providing different and incomplete responses regarding his prior drug use on his certification forms was inaccurate and untruthful.

CONCLUSIONS

1. 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).

2. Respondent is authorized to certify law enforcement officers and to revoke, suspend, or deny certification in proper circumstances. G.S. 17E; 12 NCAC 10B.

3. Though Article 3A of the APA is silent re 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).

~~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; 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. 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. Regardless, here both parties sufficiently presented to reach proposal and decision. 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).~~

~~56. 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.~~

67. 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.

78. 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.

89. 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).

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

1044. 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).

1142. 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).

1243. 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....").

1344. Isolated instances are seldom sufficient. See In Re Rogers, 297 N.C. 48, 58, 253 S.E.2d 912, 918 (1979).

1445. 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).

1546. 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.

16. As our appellate courts have said in numerous cases, to lack the good character of a justice officer, the conduct must be severe or egregious or there must exist a pattern of misconduct. In this case, the pattern of misconduct is present. On multiple occasions on both paperwork/certification forms and in-person interviews Petitioner provided inaccurate and untruthful responses regarding his drug usage and separation reason from Rutherford County EMS. Petitioner's lack of ability to explain why he would provide a completely different reason or way he acquired the hydrocodone pills is not credible. In

~~addition, while certified Petitioner used THC and controlled prescription medication that was not prescribed to him. There is substantial evidence justifying the following proposal. G.S. 150B-42.~~

PROPOSAL ORDER

~~**BASED ON** the foregoing, it is hereby ordered that Petitioner's justice officer certification is REVOKED indefinitely for lacking the good moral character required of a justice officer. it is proposed that petitioner certification NOT be revoked.~~

~~If the Commission concurs, Petitioner is encouraged to do better and take advantage of this additional opportunity, as it could be the last if you need help, get it.~~

IT IS SO ORDERED.

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's Counsel** by mailing a copy to the address below:

**George V. Laughrun
301 S. McDowell Street, Suite 602
Charlotte, NC 28204**

This the 3rd day of January 2025.

JEFF JACKSON
Attorney General

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

STATE OF NORTH CAROLINA
COUNTY OF CLEVELAND

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24 DOJ 00711

JOSHUA ANDREW PHILLIPS,)
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NORTH CAROLINA CRIMINAL,)
JUSTICE EDUCATION AND)
TRAINING STANDARDS,)
COMMISSION,)
Respondent.)

PETITIONER'S EXCEPTIONS
TO PROPOSED DECISION
AND REQUEST FOR ORAL
ARGUMENTS

COMES NOW, the undersigned attorney, George V. Laughrun, II, for the Petitioner, Joshua Andrew Phillips, and hereby request the Commission as follows:

1. Counsel for the Petitioner would respectfully argue that the Order and Proposal for Decision filed by the Honorable Jonathan S. Dills should be excepted as a true and accurate finding of fact and conclusions of law, and that the North Carolina Criminal Justice Education and Training Standards Commission accept his proposal in full.
2. Counsel would argue that given the extensive findings of fact found by Judge Dills, as Judge Dills had the opportunity to view the witnesses in person, judge their credibility and believability, that Judge Dills' findings as to Officer Phillips' certification period of suspension should be suspended without any further restrictions, should be upheld by the full Commission.

REQUEST FOR ORAL ARGUMENT

Counsel for the Petitioner would respectfully request that he be allowed oral argument not to exceed thirty minutes before the meeting of the North Carolina Criminal Justice Education and Training Standards Commission.

RESPECTFULLY submitted, this the 2nd day of January, 2025.

George V. Laughrun, II
Counsel for the Petitioner
301 S. McDowell Street, Ste. 602
Charlotte, NC 28204
Gvern2@aol.com

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing Petitioner's Exceptions to Proposed Decision has been electronically filed using the Office of Administrative Hearings electronic filing system and duly served upon the Respondent's counsel and the Special Prosecutions/Law Enforcement Section by mailing a copy to the address below:

J. Joy Strickland
Attorney for Respondent
North Carolina Department of Justice
9001 Mail Service Center
Raleigh, North Carolina 27699-9001

Exceptions to Proposed Decisions
Special Prosecutions/Law Enforcement Section
Post Office Box 629
Raleigh, North Carolina 27602-0629

This the 2nd day of January, 2025.



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