

STATE OF NORTH CAROLINA
COUNTY OF CLEVELAND

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
24 DOJ 02400

LYNN BURNS SLYCORD,)
)
 Petitioner,)
)
 v.)
)
 NORTH CAROLINA SHERIFFS')
 EDUCATION AND TRAINING)
 STANDARDS COMMISSION,)
)
 Respondent.)
)
 _____)

PROPOSED FINAL AGENCY
DECISION

THIS MATTER was commenced by a request filed June 19, 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 02400) were filed June 26, 2024. The parties received proper Notice of Hearing, and the Administrative Hearing was held in Morganton, North Carolina on December 5, 2024, before the Honorable David F. Sutton, Administrative Law Judge.

The Petitioner was *pro se*. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter the Commission or Respondent) was represented by Assistant Attorney General J. Joy Strickland.

On January 21, 2025, Judge David F. Sutton filed his Proposal for Decision. On January 21, 2025, 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. 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 were proper. The Office of Administrative Hearings ~~has had~~ 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 isto 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; 4 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 Administrative Judge held 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. 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").

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 a 5 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 ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ~~proposed~~ **ORDERED** that Petitioner's justice officer certification ~~should be~~ **is 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.

IT IS SO ORDERED.

This the 21st 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:

**Lynn Burns Slycord
143 Ole Farm Place
Kings Mountain, NC 28086**

This the 17th day of February 2025.

JEFF JACKSON
Attorney General

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