

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
24 DOJ 00711

Respondent.

[illegible]

EXCEPTIONS

1. Counsel has made minor typographical and grammatical changes as necessary to make the proposal appropriate for Final Agency Decision.
2. Finding of Fact paragraph # 8 should be amended as follows to include additional explanation provided by Petitioner:
 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.
3. Finding of Fact paragraph # 10 should be amended as follows to accurately describe to what extent Petitioner admitted his prior drug usage:
 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).
4. Finding of Fact paragraph # 11 should be amended as follows to clarify which issues about his drug usage were being referenced:
 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.

5. Finding of Fact paragraph #12 should be amended as follows to accurately describe the issues about which Petitioner was evasive:

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).

6. Finding of Fact paragraph #15 should be amended as follows to include a summary of the evidence presented:

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.

7. New Finding of Fact paragraphs # 17-18 should be added as follows to include a detailed description of the inconsistencies with Petitioner's statements about this reason for separation from Rutherford County and his prior drug use:

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.

8. Conclusion of Law paragraph # 4 should be modified as follows to reflect the Commission's position regarding the Burden of Proof:

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").

9. Conclusion of Law paragraph # 5 should be deleted as unnecessary and the remaining paragraphs renumbered accordingly:

~~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).~~

10. Original Conclusion of Law paragraph # 17, new #16, should be amended as follows to correctly reflect the conclusion drawn from the evidence:

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.

11. The Proposal for Decision should be revised to reflect the final decision of the Commission as follows:

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.~~

This the 3rd day of January 2025.

JEFF JACKSON
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/s/ J. Joy Strickland

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing **EXCEPTIONS** have been duly served upon **Petitioner's Counsel** by mailing a copy to the address below:

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

This the 3rd day of January 2025.

JEFF JACKSON
Attorney General

Attorney General

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