

**IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
24 DOJ 03486**

PROPOSED FINAL AGENCY DECISION

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. Respondent, North Carolina Sheriffs' Education and Training Standards Commission, has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify detention officers and to revoke, suspend, or deny such certification under appropriate circumstances with valid proof of a rule violation.

2. Petitioner first applied for certification with Respondent through the Haywood County Sheriff's Office. She separated from Haywood County in May 2021. (Respondent's Exhibits 2 and 5) Petitioner then applied for detention officer certification through the Jackson County Sheriff's Office in January 2024. (Respondent's Exhibit 1) Petitioner separated from Jackson County in October 2024. (Respondent's Exhibit 8)

3. Petitioner's Report of Separation from the Haywood County Sheriff's Office indicated that her separation was "a result of a criminal investigation or violation of Commission rules" and that the sheriff's office was aware of a "substantiated allegation(s) of untruthfulness." (Respondent's Exhibit 5)

4. Investigative information was provided to Respondent's probable cause committee who found probable cause to deny Petitioner's application for detention officer certification for knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, obtained or attempted to obtain credit, training or certification from the Commission." Specifically, Respondent found probable cause that, in October 2020, while enrolled in a required detention officer certification course at Haywood Community College, Petitioner cheated on a test. Written notification of that finding was provided to Petitioner. (Respondent's Exhibit 6)

5. In October 2020, while working for the Haywood County Sheriff's Office, Petitioner attended the required detention officer certification course at Haywood County Community College. Shortly before the course began in Fall 2020, Petitioner's husband abruptly separated from her without any notice. Petitioner experienced significant personal and financial hardship as a result of the separation.

6. Officer Jerry Michael Resor, who is currently a sergeant in the Jackson County Sheriff's Office in the detention center, attended the detention officer training course at Haywood County Community College. He met Petitioner while taking that course. At the end of each class, the students would take a block test on specific subject matter that had been covered during the class. The students would then give their test to another student to grade. Each student would have the opportunity to review their own test before turning it in to the instructor.

7. On March 29, 2020, the class covered subject matter related to

contraband. Petitioner was worried she would fail out of the detention officer certification course if she failed the contraband test, thereby exacerbating her existing financial difficulties. After Officer Resor graded Petitioner's test and returned it to her, Petitioner altered some of her answers by circling the correct answers for some of the questions she had left blank. (T. pp. 26-28) Petitioner's and Officer Resor's initials are written beside the questions which contain altered responses (Respondent's Exhibit 3).

8. After the contraband test, while on duty at the Sheriff's office, Petitioner was asked by Lt. Chris Shell if she had changed the answers to the test and she initially said no. Petitioner's conversation with Lt. Shell weighed on her and about two hours later, she went to Lt. Shell and confessed that she had changed the answers.

9. On November 3, 2020, Petitioner was removed from the detention officer certification course. (Respondent's Exhibit 4) Despite being removed from the course and therefore being unable to complete all of the requirements to obtain certification as a detention officer, the Haywood County Sheriff allowed Petitioner to continue working for the remainder of the one year she had to complete her detention officer certification requirements. (Respondent's Ex. 2)

10. After separating from the Haywood County Sheriff's Office, Petitioner became a full-time tattoo artist. Later, she decided to return to law enforcement work and applied to the Jackson County Sheriff's Office where she worked from January 2024 to October 2024. She was dismissed from Jackson County due to a communication issue between two supervisors.

11. Petitioner expressed regret for her decision to cheat on the contraband test in October 2020 and for being untruthful when she first spoke to Lt. Shell about this incident. Petitioner still desires to work in a detention facility for a while and hopefully advance her career to be a deputy sheriff at some point. Petitioner submitted five letters of reference with her request for administrative hearing. The letters were authored by Jackson County Sheriff Doug Farmer and other members of the Jackson County Sheriff's Department. (Respondent's Exhibit 7)

CONCLUSIONS OF LAW

1. The parties ~~are~~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 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. 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. 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 context: (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. 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”).

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). If a reviewing court places the burden on the Respondent, the burden has been met.

8. The preponderance of the evidence supports the finding that, in an effort to obtain certification from the Commission, Petitioner knowingly cheated on a required test in the detention officer certification course in which she was enrolled at Haywood Community College.

9. 12 NCAC 10B .0204(c)(2) provides that the Commission may deny the certification of a justice officer when the Commission finds that the applicant “has knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, obtained or attempted to obtain credit, training or certification from the Commission.”

10. 12 NCAC 10B .0205(2)(c) provides that period of sanction for this rule violation is not less than five years.

11. 12 NCAC 10B .0205(2) also provides 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.”

12. The Administrative Law Judge held that Thethe following circumstances brought out during the administrative hearing warrant a suspension of any period of denial:

- A. Petitioner has admitted responsibility for her actions and is remorseful.
- B. Petitioner has remained full time employed since this incident happened and has a desire to return to detention and law enforcement work.
- C. At the time of the incident, Petitioner was under a great deal of emotional and financial stress due to her marital separation.

13. The findings of the Respondent’s probable cause committee were not arbitrary and 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 denied for a period of five years but that the period of denial should be suspended, and if Petitioner is hired by a Sheriff's Office in North Carolina, that she be placed on a one year period of probation during which time she successfully complete the required detention officer certification course.

IT IS SO ORDERED.

This the 12th day of June 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:

Alexandria McCaskill
200 Noland Drive
Clyde, NC 28721
alexandriaalfeo@yahoo.com

This the 19th day of May 2025.

JEFF JACKSON
Attorney General

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