

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
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Petitioner is a recent college graduate from Raleigh, North Carolina and is currently employed as a security officer at Meredith College. (Tr. p. 59-60). Following his graduation from the University of North Carolina at Chapel Hill in 2022, Petitioner began searching for jobs in law enforcement and ultimately applied at Sampson Correctional Institution (“Sampson Correctional”) in the Summer of 2022. (Tr. p. 60) Petitioner applied for a correctional officer position with Sampson Correctional and went for an interview where he received a conditional offer of employment. At the interview, Petitioner was informed that he needed to submit to a drug screening. (Tr. p. 61) Petitioner believed that if he was not going to accept the job offer, there was no need for him to take the drug screen and further testified that no specific appointment for the

drug screen was made. (Tr. p. 61-63) At the time of this job offer, Petitioner was living in Raleigh, North Carolina with his parents and the commute to Sampson Correctional was well over an hour. Petitioner began to discuss the work-life balance concerns with his parents after the interview. (Tr. p. 64-65) After the interview and upon his return home, Petitioner called and informed Sampson Correctional that he would not be accepting the offer and he did not think anything else of the drug screening. (Tr. p. 65-66).

On July 22, 2022, the North Carolina Department of Public Safety, Division of Prisons ("DPS"), sent Petitioner a letter which informed him that the offer of employment was withdrawn due to the results of the drug screening. (Petitioner Ex. 4) At that point, Petitioner had not taken a drug screening, nor had he refused to submit to a drug screen. This letter purported to prohibit applications for three (3) years and did not allow Petitioner to challenge or appeal the decision.

On August 5, 2022, the North Carolina Department of Justice, Criminal Justice Standards Division, sent Petitioner another letter which informed him that he was "ineligible to become certified as a correction officer or criminal justice officer" in North Carolina for three (3) years due to a "refusal to submit to a drug screening in a timely manner on July 20, 2022." (Petitioner Ex. 5) Again, this letter failed to provide Petitioner with any appeal rights. This raises a number of issues with the process for the Sampson Correctional position.

Catherine Wells, an employee of Sampson Correctional testified at the hearing before the Administrative Law Judge and was also present for Petitioner's interview at Sampson Correctional. She discussed with Petitioner the drug screening process and signed the consent form, Petitioner Exhibit 3. This form, signed the day of the interview, states that applicants will receive a maximum of 24-hours' notice of the "exact testing date and time." (Petitioner Ex. 3) Moreover, this form states that "If more than 24-hours elapses, it is considered a refusal to submit

to a drug test.” Petitioner and Ms. Wells signed this form on July 20, 2022. Despite that date of signature, there was not specific date and time for the drug screen. Ms. Wells testified that it was the practice of Sampson Correctional to send applicants to FastMed based on a list she maintains and “encourage[s] them to go straight there” (Tr. p. 42: 11-15) There is not a specific appointment made. Even more troubling, on the North Carolina Department of Public Safety, Criminal Justice Drug Screening Report Form, Ms. Wells was listed as the witness for the refusal to submit to a drug screening and the date of refusal was listed as July 20, 2022. (Respondent Ex. 6) Ms. Wells testified at the hearing that it was not her handwriting on the form and she did not sign the form. (Tr. p. 50)

Sampson Correctional and DPS provided forms to Petitioner that said he would be given a specific date and time to appear for a drug screen and that he would have 24-hours to appear for the drug screening. Despite this form, Ms. Wells testified about a practice that is at odds with DPS policy. Petitioner was not given a date or time to appear, just a location and it was suggested that he go right after the interview. Furthermore, DPS’ form documenting the alleged refusal to submit to a drug screen listed the alleged refusal as the same day of the conditional offer of employment, July 20, 2022, even though Petitioner had 24-hours from that date to submit to the drug screen. Even worse, the alleged witness to the refusal according to Respondent Exhibit 6, testified under oath that she never witnessed a refusal.

There is not a clear picture of what Sampson Correctional or DPS required of Petitioner, particularly after he withdrew his name from consideration and declined the conditional offer of employment. Petitioner then received letters from DPS that he was no longer eligible for employment due to the results of the drug screen and refusal to submit to a drug screen in a timely manner. Those are two different things. One document says the results of the drug screen are the

basis for withdrawing the conditional offer and one says the failure to timely take the drug screen is the basis for withdrawing the offer. By the time these two letters had been sent, Petitioner had withdrawn his application and notified Sampson Correctional that he was not interested in the position. Both letters prohibited Petitioner from applying for three years and provided him with no opportunity to contest that prohibition.

The failures of DPS to follow proper procedure and proper documentation of employment files led to the issues with the Commission. As the Proposal for Decision notes, "the issues in this case might have been averted had the correspondence issued in July 2022, particularly the letter dated July 22, 2022, included notice of appeal rights." (Conclusion of Law 17)

In 2023, Petitioner applied for and began working for Durham County as a detention officer. (Tr. p. 70-71) In June 2023, Petitioner completed the Form F-3 for the Commission as part of the application process with Durham County. Question 26 on this form asks: "Have you ever been denied employment by a criminal justice agency after a conditional offer of employment was made?" (Petitioner Ex. 8) Petitioner marked "no" to this question because he withdrew his application from Sampson Correctional as discussed above. In April of 2024, Petitioner was notified that there was an issue with his F-3 and question 26. On April 11, 2024, Petitioner drafted a statement explaining his basis for answering "no" to question 26 on the Form F-3, which mirrored the discussion above and testimony at hearing. It was not until Petitioner received a letter from the Commission dated October 15, 2024 that he discovered that the Commission still had concerns with his Form F-3. On October 15, 2024, the Commission issued a Notification of Probable Cause to Deny Justice Officer Certification. (Petitioner Ex. 2) This document again mistakenly notes that the date Petitioner allegedly refused to submit to a drug screen was July 20, 2022, despite having

24-hours to do so and despite withdrawing from consideration. At the time of this letter, Petitioner had not had employment denied after a conditional offer of employment.

Ms. Sirena Jones, the Deputy Director in the Sheriff's Standards Division, testified at the hearing about the documents reviewed and the process for denying Petitioner's certification. Ms. Jones testified about the memorandum provided to the Probable Cause Committee when reviewing Petitioner's case. That memorandum stated that Petitioner was given a specific date and time to appear for a drug screen, but the actual date and time was not included anywhere in that memorandum. (Tr. p. 30) Furthermore, nothing in the memorandum, other than Petitioner's written statement, noted that Petitioner withdrew his application for the Sampson Correctional position. (Tr. p. 30-31) In fact, there was no follow-up to determine what happened with that conditional offer or drug screen and no one in the Division staff requested additional information or attempted to contact Sampson Correctional or Petitioner. (Tr. p. 35-36)

Petitioner was not present for the Probable Cause Committee meeting because he thought it was simply part of the process. (Tr. p. 78) Petitioner was improperly disciplined by DPS and Sampson Correctional in 2022. Petitioner then applied for a position with Durham County and was again railroaded by forms. The response to question 26, "no" remains true today but Petitioner provided additional information to supply context for his response. Despite that additional information and context, no investigation was performed, and Petitioner's certification was denied.

Standard of Review

The Commission is governed by North Carolina General Statute § 150B, Article 3A. This Article sets forth the process for review of agency decisions and administrative hearings. Pursuant to § 150B-40(e), the Commission may designate an Administrative Law Judge to sit in place of the Commission for contested cases for discipline or certification denials.

12 N.C. Admin. Code 10B .0204 controls when the Commission may deny certification for a justice officer. The Commission may deny a certification when an applicant:

- (1) "has knowingly made a material misrepresentation of any information required for certification or accreditation from the Commission" or
- (5) "has been denied certification or had such certification suspended or revoked by the North Carolina Criminal Justice Education and Training Standards Commission, or a similar North Carolina, out-of-state or federal approving, certifying or licensing agency."

The above-cited provisions were the basis for denying Petitioner's certification.

It is the role of the administrative law judge in a contested case to weigh the evidence, determine the credibility of witness testimony, and make findings of fact and conclusions of law. *Harris v. N.C. Dep't of Pub. Safety*, 252 N.C. App. 94 (2017). Agencies reviewing those decisions should then generally defer to the administrative law judge.

Argument

Petitioner has not been denied certification by the Commission or similar agency

The first basis for denial of Petitioner's certification cited by the Commission was 12 NCAC 10B .0204(5). The Proposal for Decision correctly held that Petitioner did not violate this rule and had not been previously denied certification by DPS.

The August 5, 2022, letter from the Criminal Justice Standards Division stated that Petitioner was denied certification as a corrections officer for refusal to submit to a drug screen on July 20, 2022, and such denial was based on 12 NCAC 09G .0504(d)(12)¹. (Petitioner Ex. 5) Based on this letter, the Commission denied Petitioner's certification. However, the August 5, 2022, letter as discussed above is fatally flawed.

¹ The August 5, 2022 letter (Petitioner Ex. 5) cites 12 NCAC .0504(d)(12) for refusal to submit to a drug screen. This rule is now codified as 12 NCAC .0504(d)(13)

First, Petitioner did not refuse to submit to a drug screening. Petitioner was not given a specific date or time per the requirements of the consent form and Petitioner later withdrew his status as an applicant for the position. The Administrative Law Judge correctly concluded in the Proposal for Decision that there was "undisputed testimony" that Petitioner contacted Sampson Correctional within the 24-hour drug testing period to decline the employment offer. (Conclusion of Law 6) Furthermore, there was no evidence in the record to show that there was any investigation into the statements Petitioner made in his written supplement to the Form F-3 question 26.

Second, Petitioner could not have refused to take the drug screen on July 20, 2022. It is also undisputed that the drug screen consent form stated that he would be given a specific date and time to appear for the drug screen and then have 24-hours to complete said screening. However, despite this clear policy, the testimony of Ms. Wells highlighted a deviation from the policy and a reliance on the practice of Sampson Correctional. Petitioner could not have refused the drug screening on July 20, 2022, the day he was informed of that requirement, if he was given 24-hours to complete the drug screening. Moreover, despite appearing as the witness of the alleged refusal, Ms. Wells testified that she did not actually witness the refusal to submit to a drug screening on July 20, 2022. Petitioner did not refuse to submit to a drug screening on July 20, 2022. Rather, Petitioner rejected the offer of employment made by Sampson Correctional. Petitioner was not given any notice of appeal rights to the DPS determination that he refused a drug screening and informed that his conditional offer of employment was withdrawn. Therefore, Petitioner did not refuse a drug screen pursuant to 12 NCAC 09G .0504(d)(12) and Petitioner had not been previously denied certification pursuant to 12 NCAC 10B .0204(d)(5).

Petitioner did not knowingly make a material misrepresentation on the Form F-3

The second basis for denial of certification was 12 NCAC 10B .0204(d)(1), a knowing misrepresentation of material fact. The Proposal for Decision correctly holds that because Petitioner did not refuse to submit to a drug screen, he could not have made a knowing misrepresentation.

There is no evidence presented that would show Petitioner knowingly provided a false statement when he answered question 26 with “no”. In fact, the testimony and evidence presented would show the opposite. Petitioner believed that he had not had certification previously denied because he withdrew his acceptance of the conditional offer from Sampson Correctional. Petitioner did not refuse to submit to a drug test and rejected the conditional offer of employment. That is not a denial of certification. There was no evidence of additional investigation performed when Petitioner submitted his April 11, 2024 statement and no investigation done to determine if he actually refused a drug screening.

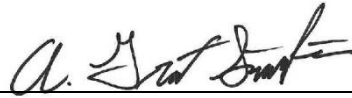
In this case, the focus is on the word “knowingly” found in the above-cited rule. The Commission cannot produce evidence that Petitioner knowingly made this material misrepresentation, as opposed to a clear misunderstanding of the facts and circumstances surrounding the conditional offer of employment. The evidence presented to the Administrative Law Judge and now before the Commission is that Petitioner withdrew from the offer of employment and therefore, did not knowingly make a material misrepresentation pursuant to 12 NCAC 10B .0204(d)(1).

Conclusion

The Commission should adopt the Findings of Fact, Conclusions of Law, and Proposal for Decision issued by Administrative Law Judge Evans with the exception and alteration of Finding of Fact 2 submitted by Petitioner.

This the 14th day of August, 2025.

**HEDRICK GARDNER KINCHELOE &
GAROFALO LLP**



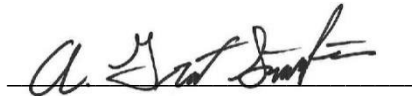
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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this **PETITIONER'S WRITTEN ARGUMENTS IN SUPPORT OF PROPOSAL FOR DECISION** in the above-entitled action upon all parties in this action via electronic mail, addressed as follows:

J. Joy Strickland
NC Department of Justice
jstrickland@ncdoj.gov
Attorney for Respondent

This the 14th day of August, 2025.

A handwritten signature in black ink, appearing to read "A. Grant Simpkins", is written over a horizontal line.

A. Grant Simpkins