

STATE OF NORTH CAROLINA
COUNTY OF COLUMBUS

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
19 DOJ 01619

<p>Maurice A Devalle Petitioner,</p> <p>v.</p> <p>NC Sheriffs Education and Training Standards Commission Respondent.</p>	<p>PROPOSAL FOR DECISION</p>
---	-------------------------------------

On December 3-4, 2019, Administrative Law Judge Melissa Owens Lassiter conducted a hearing in this matter in Raleigh, North Carolina pursuant to N.C. Gen. Stat. § 150B-40(e) and Respondent's request for designation of an Administrative Law Judge to preside at a hearing, under Article 3A, Chapter 150B of the North Carolina General Statutes regarding Respondent's denial of Petitioner's application for justice officer certification.

APPEARANCES

For Petitioner: Michael C. Byrne
Attorney for Petitioner
Law Offices of Michael C. Byrne
Raleigh, North Carolina

For Respondent: Ryan Haigh
Special Deputy Attorney General
North Carolina Department of Justice
Raleigh, North Carolina

ISSUES

1. Does substantial evidence exist for Respondent to deny Petitioner's application for justice officer certification for committing the Class B misdemeanor offense of "Willfully Failing to Discharge his Duties"?
2. Does substantial evidence exist for Respondent to deny Petitioner's application for justice officer certification for failure to maintain good moral character in violation of 12 NCAC 10B .0301(a)(8)?

APPLICABLE RULES AND STATUTES

Article 3A, N.C. Gen. Stat. § 150B
N.C. Gen. Stat. § 14-230
12 NCAC 10B .0103(10)(b)
12 NCAC 10B .0204 (b) and (d)
12 NCAC 10B .0201 & .0205
12 NCAC 10B .0301(a)(8)
12 NCAC 10B .0204(b)(2)

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner: 1
For Respondent: 1, 2, 7, 8-10, 15-17, 20-22, 32-36, 38
Offer of Proof: 3-6, 11, 13

WITNESSES

For Petitioner: Petitioner, Stedman Jody Greene, Jeremiah Johnson
For Respondent: Sirena Jones, Petitioner, Gerald Burton, John Christopher Morton, James Wingo, Rodney Sawyer

FINDINGS OF FACT

After careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits admitted into evidence, after weighing the evidence, and assessing the credibility of the witnesses including their demeanor, any interests, bias, or prejudice the witnesses may have, the opportunity of the witnesses to see, hear, know or remember the facts or occurrences, whether the testimony of the witnesses was reasonable, and whether the testimony is consistent with all other believable evidence in the case, the undersigned finds as follows:

Notice of Probable Cause to Deny Certification

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, and both parties received notice of the hearing.
2. On January 29, 2019, Respondent (“the Commission”) notified Petitioner that its Probable Cause Committee had found probable cause to believe that Petitioner’s justice officer certification should be denied based upon:
 - (1) Commission of the Class B misdemeanor offense of “Willfully Failing to Discharge Duties” in violation of N.C. Gen. Stat. § 14-230 in 2016 when Petitioner, while employed as a law enforcement officer with the N.C. State

Highway Patrol (“the Patrol”) was untruthful in reporting his work time and failed to report for duty on numerous occasions. Respondent based this determination on Petitioner using his patrol-issued MDC to check on and off duty while remaining at his residence, and the N.C. State Highway Patrol’s investigation and determination that Petitioner had neglected his duty by remaining at his Wake County residence on numerous occasions when he was supposed to be performing supervisor and patrol duties in Wayne County. The Patrol’s investigation had also determined that Petitioner had reported false, misleading, and inaccurate information into the Beacon Payroll System, resulting in Petitioner being compensated for hours he did not work. In 2017, the Patrol terminated Petitioner’s employment after it found Petitioner violated the Patrol’s policies, and

(2) No longer possessing the good moral character required of all justice officers due to Petitioner’s untruthfulness and the circumstances surrounding his actions while holding his justice officer certification and based on the totality of Petitioner’s actions.

Respondent informed Petitioner that it would deny his justice officer certification for five years for committing the Class B misdemeanor of “Willfully Failing to Discharge Duties” while certified as a law enforcement officer, and deny such certification indefinitely based upon a lack of good moral character. (Resp. Ex. 2)

3. The 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 justice officers and to revoke, suspend, or deny such certification under appropriate circumstances with valid substantial proof of a rule violation.

Background Facts

4. Petitioner applied for deputy sheriff certification through the Columbus County Sheriff’s Office where Petitioner began employment on or about August 2017.

5. Respondent had previously certified Petitioner with the Cabarrus County Sheriff’s Office as a telecommunicator from 1996 to 1998, as a detention officer from September 1996 to October 1996, and as a deputy sheriff from September 1996 to May 1998.

6. The North Carolina Criminal Justice Education and Training Standards Commission had previously certified Petitioner through the N.C. Department of Public Safety/N.C. State Highway Patrol (“the Patrol”) from November 25, 1998 through April 24, 2017.

7. Petitioner was employed with the Patrol for 19 years, from November 25, 1998 through April 24, 2017, during which time Petitioner received one disciplinary action in the form of a written warning.

8. In November 2016, a local news station reported to the Patrol that Petitioner spent various days at his residence in Wake County, North Carolina while he was supposed to be working at his duty station in Wayne County.

9. After conducting an internal investigation, on April 24, 2017, the Patrol terminated Petitioner from employment for substantiated untruthfulness, neglect of duty, and insubordination in violation of the Patrol's policies, and for violating the Patrol's policy on residency. The issue of whether the Patrol had just cause to dismiss Petitioner from employment is not before this Tribunal.

Respondent's Investigation

10. On April 28, 2017, Respondent Commission received an Affidavit of Separation from the N.C. State Highway Patrol that it had dismissed Petitioner from employment on April 24, 2017 for violating the Patrol's policies regarding Truthfulness, Neglect Of Duty, and Insubordination, and for violating the Patrol's Rules Establishing Residence Policies. (Resp. Ex. 1)

11. 12 NCAC 10B .0201 INVESTIGATION OF VIOLATION OF RULES provides:

(b) Before taking action against an agency, school, or individual for a violation, the Division shall investigate the alleged violation and, when required by the Director, shall present a report of its findings to the Probable Cause Committee of the Commission.

12. Respondent's Sirena Jones investigated Petitioner's application for certification with the Columbus County Sheriff's Department. Ms. Jones has been employed by Respondent for approximately 15 years.

13. Ms. Jones has no background in law enforcement and no law degree. She has never served as a law enforcement officer, including as a deputy sheriff. She has never taken Basic Law Enforcement Training. She obtained a college degree in Sociology with a minor in Criminal Justice.

14. Ms. Jones' investigation consisted of reading the Patrol's Internal Affairs ("IA") investigative file, drafting a written summary of the Patrol's IA file, and reviewing Petitioner's applicant/officer profile and the Patrol's Report of Separation (Form F-5B). Resp. Ex. 1

15. Ms. Jones drafted a Memorandum for Respondent's Probable Cause Committee and attached her summary of the Patrol's IA file, the applicant/officer profile, and the Patrol's Report of Separation to such memorandum. Resp. Ex. 1, Attachments 1-3. Ms. Jones sent a copy of her memorandum and attachments to the Probable Cause Committee before its probable cause hearing on Petitioner's justice officer certification application. T. pp. 50-54. In her summary of the Patrol's IA file, Ms. Jones referenced

fuel logs for Petitioner's patrol vehicle for September 2, 2016 to November 13, 2016, and Petitioner's weekly report of work activity from September 30, 2016, October 1-2, 2016, October 6, 2016, October 11, 2016 and October 14, 2016. Personnel Charge Sheets from the Patrol's IA file were also attached to Jones' memorandum. Resp. Ex. 1.

16. By her own admission at hearing, Ms. Jones agreed that her summary of the Patrol's IA file was "essentially writing what someone else said in the Patrol's IA report." T. p. 57.

17. Ms. Jones admitted that her summary was not the result of an independent investigation into Petitioner's time slips. T. p. 57. Ms. Jones could not recall if she actually reviewed Petitioner's time slips at issue. T. p. 57. She acknowledged that she did not obtain any information from Beacon, the State of North Carolina Human Resources Payroll system, showing what hours Petitioner had recorded his time worked for the Patrol. T. p. 58.

18. Ms. Jones was unable to state what was Petitioner's job when he was employed by the Highway Patrol. T. p. 65. She was likewise unable to state whether Petitioner's job duties included regularly responding to calls. T. p. 65. When asked how she could claim that Petitioner neglected his duties to the extent of committing a crime if she does not know the duties that a Highway Patrol sergeant performed, Jones replied, "That was the finding of the Highway Patrol." T. p. 65.

19. Despite agreeing that interviewing persons with knowledge is one of the primary methods by which an investigator would find facts, Ms. Jones admitted that she interviewed no one in the course of her investigation. T. pp. 56-58.

20. Ms. Jones did not interview Petitioner. She explained she didn't interview Petitioner because he was interviewed by the Patrol. T. pp. 59-60.

21. Despite knowing that Petitioner had been working as a deputy sheriff for two and a half years, Ms. Jones did not interview the Columbus County Sheriff or the school principal for whom Petitioner served as a school resource officer since August 2017. Ms. Jones had no knowledge of what Petitioner did while working as a school resource officer or how he discharged his duties as a school resource officer. T. pp. 56-57, 67.

22. When asked if Petitioner was ever charged by any district attorney, arrested by law enforcement, arraigned in court or tried in court for the crime of "Willful Neglect of Duties," Ms. Jones responded, "To my knowledge, no." T. pp. 59-60. Ms. Jones failed to advise the Probable Cause Committee, in her memorandum, that Petitioner was never charged with the crime of "Willfully Failing to Discharge Duties." T. p. 61.

23. At no time did the Highway Patrol find that Petitioner committed a crime of "Willfully Failing to Discharge Duties" or "Willfully Neglecting his duties" in violation of N.C. Gen. Stat. § 14-230.

24. The Tribunal specifically finds as fact that Petitioner has never been charged for the crime of “Willfully Failing to Discharge Duties.” Petitioner has never been found civilly responsible for any such crime. Petitioner has never been charged, arraigned, or been indicted by a grand jury for the crime Respondent alleges he committed. T. pp. 59-60.

25. Despite having no legal or law enforcement background, and relying solely based upon the Patrol’s IA investigation for her investigative results, Ms. Jones advised the Probable Cause Committee that this matter was before them to determine whether sufficient evidence exists to establish probable cause to believe that “in 2016, Maurice Devalle committed the felony offense of “Obtaining Property by False Pretenses” in violation of N.C. Gen. Stat. § 14-100, such that certification should be denied as set out in Rule .0204(a)(1).” Resp. Ex. 1, p. 2.

26. Ms. Jones also advised the Probable Cause Committee, in her memorandum:

You may also wish to consider whether there is sufficient evidence to show Maurice Devalle committed the class B offense of “Willful Fail to Discharge Duties” in violation of NC General Statute § 14-230, such that certification should be denied as set out in Rule .0204(d)(1).

Resp. Ex. 1, p. 2. Lastly, Ms. Jones stated that “[b]ased upon Mr. Devalle’s untruthfulness in the reporting of his work time, failing to report for duty and/or the commission of criminal offenses,” this matter is before the Probable Cause Committee to determine whether Petitioner possesses the good moral character required of all justice officers. Resp. Ex. 1, p. 2.

27. At the Probable Cause Committee hearing, Ms. Jones read her memorandum to the Committee, and Petitioner was allowed an opportunity to present evidence. Petitioner did not see or receive a copy of Ms. Jones’ memorandum to the Probable Cause Committee. T. pp. 266-267.

Neglect of Duty

28. The State Highway Patrol Policy Manual, Directive H.1, paragraph XV Reporting for Duty provided:

Members shall report for duty at the time and place required by assignment or orders and shall be capable of performing their duties. They shall be properly equipped and cognizant of information required for the proper performance of duty so that they can immediately perform their duties.

Resp. Ex. 10, p. 5.

29. In November of 2016, pursuant to the Patrol's policy on Reporting for Duty, Highway Patrol protocol required Patrol employees to check in as being on-duty when they reached their assigned duty station. The Patrol employees used the code 10-41 to designate in the Patrol's computerized automated dispatch system ("CAD") that they were in uniform and on duty in their assigned duty station. All Patrol employees were required to remain in their duty station until the time they were supposed to end work. After ending work, they could then travel to their residences in an off-duty travel status. Resp. Ex. 10, p. 5; T. p. 113.

30. At all times relevant to this case, Petitioner's duty station with the Patrol was Wayne County, North Carolina where he served as a sergeant.

31. At all times relevant to this case, Petitioner's residence was in Wake County, approximately 35 miles from the county line of Wayne County and approximately 44 miles from Troop C, District 2, District Office in violation of Patrol policy regarding residency requirements. At this hearing, Petitioner admitted that he violated the Patrol's policy on residency requirements by living in Wake County.

32. At the time of his dismissal, Petitioner's chain of command was First Sergeant Jerry Burton (now retired) as Petitioner's direct supervisor, Troop C Lieutenants Christopher Morton and Steve Finney, and Captain Jeffrey O'Neill Holmes (now retired).

33. At all times relevant to this case, Sgt. Burton, Capt. Holmes, Capt. Henderson, Lt. Morton, all knew Petitioner was living in Wake County.

34. In early 2016, Petitioner met with Capt. Holmes, Lt. Finney, and First Sgt. Gerald Burton. Captain Holmes told Petitioner that "he was to be where he was supposed to be and doing what he was supposed to be doing." Petitioner and First Sgt. Burton acknowledged to Capt. Holmes they understood what he was telling them.

35. Later that day, First Sgt. Burton discussed Captain Holmes' statements from earlier that day with Petitioner and emphasized that this meant that Petitioner should be in Wayne County when he was supposed to be working. T. p. 319.

36. During the Patrol's Internal Affairs interview, Petitioner admitted that he understood he was supposed to be in Wayne County when working.

37. Petitioner's prior supervisor in Durham County, First Sgt. Cain, had approved Petitioner to work from home. When Petitioner began working in Wayne County, he continued to work from home while on duty.

38. The undisputed evidence proved that Sgt. Burton, Petitioner's direct supervisor, never granted Petitioner permission to work from home while on-duty and assigned to Wayne County. In fact, Petitioner never requested to do so. T. pp. 319-321. Petitioner never informed Sgt. Burton that he was working from his home in Wake County.

39. After Hurricane Matthew hit Wayne County in 2016, Sgt. Burton never told Petitioner he could work from home instead of working in Wayne County. Sgt. Burton advised Petitioner and Sgt. Whitley that they were strictly in a response mode, they were not going to be taking preventive patrol action, and as supervisors, we needed to make sure troopers had what they needed. Sgt. Burton told Petitioner and Sgt. Whitley that when they were not specifically going to meet the needs of the troopers or the citizens of the county, they should be stationary so they're not burning fuel and that "we should be just ready to go." T. pp. 320, 329.

40. On Friday, November 11, 2016, at approximately 2:53 p.m., Petitioner signed into the Highway Patrol CAD system as being on-duty while he remained at his residence in Wake County.

41. At approximately 7:00 p.m. that day, and upon orders from his superiors, Captain Morton visited Petitioner's residence. Petitioner's patrol vehicle was parked in the driveway. Petitioner came to the door wearing shorts and a t-shirt. Morton asked Petitioner if he was on-duty. Petitioner replied that he was off-duty, but he thought the CAD was showing him as on-duty. Petitioner told Capt. Morton he had attempted to sign off-duty from the CAD system at 5:00 p.m. through his mobile data computer (MDC), but realized he had not done so. Petitioner acknowledged that he had not left the house that day. He indicated he was sick, and that he would not be leaving his home and reporting to the Patrol's district office in Wayne County. Petitioner questioned Morton's leadership style and the legacy Morton was leaving at the Patrol.

42. Immediately after Lt. Morton left Petitioner's residence, at approximately 7:35 p.m., Petitioner signed off-duty on the Patrol's CAD system.

43. At hearing, Petitioner admitted that during this two-hour period on November 11, 2016, he was lying in bed and showering, and had not been engaged in work-related activity. Petitioner admitted that he had been at his residence and out of uniform the whole day. Petitioner never called anyone on the Patrol for coverage or notified anyone, including Sgt. Burton, that he was ill.

44. Petitioner signed in for work eight days between September 22, 2016 and October 6, 2016. T. p. 149. During that period, Petitioner claimed 767 miles driven on his Weekly Reports of Daily Activity.

45. The Patrol's fuel logs for Petitioner's vehicle established that Petitioner had only driven a total of 292 miles during the September 22 to October 6, 2016 period. If Petitioner had driven to the Wayne County line from his residence in Wake County on eight days, it would have required a minimum of 560 miles. T. pp. 149-151. Having driven a total of 292 miles, Petitioner could have made it to the Wayne County line and back only three times during these eight working days. Resp. Exs. 15, 20, 21.

46. Substantial evidence at hearing proved that Petitioner was not present at his duty station in Wayne County from September 22, 2016 through October 6, 2016 at times when he claimed that he was present and on-duty.

47. At no time did Petitioner contact Patrol troopers or his superiors and tell them that he was not at his duty station and that he needed coverage.

48. Petitioner admitted that on occasion he drove home for lunch and stayed at home for extended periods of time while he was on-duty. Petitioner admitted that on multiple occasions, he returned to his residence before the end of his shift and remained there for the remainder of his shift.

49. Petitioner also admitted that he signed on as on-duty and stayed home for his entire shift on some days. Petitioner admitted that when he was on-duty at his residence he should have been in Wayne County. Petitioner admitted this was a violation of Patrol policy.

50. Petitioner admitted that time spent at his residence was nonetheless time he claimed hours worked for the Patrol.

51. At hearing, Petitioner attempted to justify his working from home while on-duty by stating that a “very, very small percentage” of his job duties involved being on patrol. However, Petitioner completed weekly reports of daily activity claiming approximately 40% of his time was spent on patrol in Wayne County.

52. The transcripts of Petitioner’s statements to the Patrol’s Internal Affairs on November 15, 2016, November 18, 2016, and March 27, 2017 corroborate Petitioner’s above-cited admissions. They also provide substantial statements of Petitioner made closer in time to the events in question, shedding light on facts that Petitioner allegedly no longer recalls.

53. Petitioner alleged that during the eight days he was on-duty between September 22, 2016, and October 6, 2016, he was allegedly spending time on administrative duties. He described his duties as a sergeant as including answering and sending e-mails, scheduling, preparing documentation for wrecker inspections, and personnel file inspections. T. pp 274-75. However, during that period, Patrol records showed Petitioner only sent two emails – one of which was for fantasy football. T. pp. 155-156.

54. At hearing, Sgt. Burton opined that sergeants could fulfill most of their supervisory duties while located outside their assigned county, and from anywhere in the State, as they have mobile computers and air cards in their cars. T. p. 321.

55. However, sergeants must be located in their assigned duty station to meet with the troopers they supervise to ensure the troopers have all they need, to oversee the troopers’ completion of paperwork, completion of inspection inventory and evidence, their

completion of wrecker files and inspections, and to review video from the troopers' in-car videos. Sergeants must interview people who file complaints and handle evidence at the district office. Sergeants are also required to meet and build rapport with the community by participating in numerous community activities. T. p. 322.

56. Part of Petitioner's responsibilities as a supervisor was overseeing troopers that were his junior. The undisputed evidence at hearing established that Petitioner supervised between one and seven troopers daily in his district. Petitioner acknowledged that his duty was to assist troopers in the field when they called for assistance and review their work. T. pp. 220-221.

57. The State paid Petitioner to perform his duties in his assigned duty station of Wayne County. However, for multiple days, Petitioner was not in Wayne County, and accordingly, Petitioner could not perform his duties as assigned. Common sense dictates that Petitioner was unable to provide training and support to troopers under his command in light of his absence from Wayne County. As a result, Wayne County was deprived of Petitioner's services and the public paid Petitioner for work that he did not fulfill. Petitioner's conduct also created an inherent lack of trust and dispersion of the reputation of the Patrol, which is also a public injury.

Good Moral Character

58. Steadman Jody Greene is the Sheriff of Columbus County, Whiteville, North Carolina. Petitioner works for Sheriff Greene as a deputy in the capacity of the school resource officer. In this capacity, Petitioner is armed with both lethal and non-lethal weapons. T. p. 31. Petitioner serves at the pleasure of the Sheriff. T. p. 32. At the time of hearing, Sheriff Greene had just been released from the hospital and voluntarily came to testify that Petitioner does a fine job for him and how important Petitioner is to his agency. T. p. 30.

59. When Sheriff Greene hired Petitioner, he was aware that Petitioner had been dismissed from the Patrol. Petitioner had told him. Sheriff Greene is satisfied that Petitioner has good moral character. Given the importance of the school resource officer, Greene must place someone in that position upon which he has a special trust and confidence. Sheriff Green has that special trust and confidence in Petitioner. T. pp. 32-33. He hired Petitioner based upon the principal, school board members, parents and students all recommending him and not based upon the past. T. p. 31. Sheriff Greene is satisfied that Petitioner had performed his duties "above and beyond." T. p. 34. If Petitioner was unable to serve as a deputy, it would negatively impact Greene's force.

60. Based on Petitioner's service as a deputy sheriff, Sheriff Greene has no hesitation as to Petitioner's truthfulness or ability to tell the truth. T. p. 38.

61. Jeremiah Johnson is the principal at East Columbus High School in Lake Waccamaw, North Carolina. T. p. 233. Johnson knows Petitioner in two capacities: as the school resource officer at East Columbus High School and as an assistant football coach

and track coach at that school. Petitioner has served, and continues to serve, in those capacities since 2017. T. p. 233. Johnson has had the opportunity to watch Petitioner perform those duties “every day” that school is in session. T. p. 233. Johnson described Petitioner, in performing his duties as a school resource officer, as “dedicated to the school, dedicated to the students, dedicated to the staff. He comes to school – comes to work every day, is there to serve and protect. He’s part of my administrative team. He’s almost my right-hand man.” T. p. 234.

62. When asked whether he had had an opportunity to form an opinion as to Petitioner’s character, Johnson said, “He is an awesome person. He is an awesome man. And I’m not just saying that for me. I’m saying that for my kids at my school.” T. p. 234. When asked whether Petitioner had ever committed any act that would cause Johnson to doubt Petitioner’s capacity to be truthful, Johnson answered, “No.” T. p. 234.

63. Mr. Johnson has no doubt, based on what he’s observed from Petitioner, that Petitioner does not lack the character necessary to serve as a school resource officer at Johnson’s high school. T. p. 239. Johnson would not have permitted Petitioner to serve as an assistant football coach and track coach, in addition to serving as a school resource officer, if he had any doubts about Petitioner’s character. T. p. 235.

64. Mr. Johnson opined that if Petitioner was no longer able to serve East Columbus as a school resource officer, the lack of Petitioner’s presence would make the school less safe. T. p. 236.

65. Johnson also spoke of the strong professional bond that exists between himself as principal and Petitioner as the school resource officer. T. p. 236. Johnson thinks that Petitioner is the best school resource officer he has ever worked with and as a school administrator, Johnson has trained many SROs. T. p. 239. He opined that interaction with the students would suffer tremendously if Petitioner was not at East Columbus High. “. . . These kids, they look up to him.” T. p. 239. Johnson explained how Petitioner has helped other students such as buying shoes for kids, bought lunch for kids, and given them food. “You know, we all – he’s where he – he’s where he belongs.” T. p. 240.

66. Johnson completed his testimony by describing an event where Petitioner intervened to help a student stay in school after a traumatic family event. That student recently signed a letter of intent to play college football. T. p. 240.

67. No one from the Respondent, including Jones, ever contacted Johnson regarding Petitioner’s performance of his duties as a school resource officer, his character, or anything else. T. p. 238.

68. Neither Ms. Jones nor Respondent presented any evidence at hearing regarding Petitioner’s performance of his duties as a Columbus County deputy sheriff. Respondent failed to present any evidence concerning any activities involving Petitioner that took place more recently than 2016. T. p. 56. While four witnesses from the Patrol

testified regarding Petitioner's dismissal from the Patrol, none of those witnesses possessed any first-hand knowledge of how Petitioner has conducted himself in terms of truthfulness or conformance with policies while employed as a deputy sheriff in Columbus County. T. pp. 168-169. None of those witnesses opined that Petitioner lacked good moral character, either generally, or to serve as a deputy sheriff in this State.

69. At hearing, Petitioner's testimony exhibited a lack of candor and sincerity during cross-examination by Respondent's counsel. During Respondent's questions, Petitioner was evasive and feigned a lack of memory or confusion in response to Respondent's questions about Petitioner's conduct with the Patrol in 2016. Petitioner remained evasive and elusive even after having his recollection refreshed with his prior statements. In contrast, Petitioner readily recollected circumstances from this period, when questioned by his own counsel, without having to review any materials.

70. During his case in chief, Petitioner presented significant evidence demonstrating that Petitioner has rehabilitated and rebuilt his career since 2016 and 2017 while working as a school resource officer at East Columbus High School. Such evidence showed that Petitioner has exhibited highly favorable traits, including but not limited to helping, teaching, and serving as positive role models for students at East Columbus High School not only as a school resource officer, but as a coach in two sports. Sheriff Greene and Principal Johnson opined that Petitioner's absence from their respective entities would have a negative impact on their workplaces. The scope and magnitude of Petitioner's character traits, as witnessed by Sheriff Greene and Principal Johnson, qualify as extenuating circumstances which the Respondent should consider in determining whether Petitioner possesses the good moral character required of a justice officer.

CONCLUSIONS OF LAW

1. The parties are properly before the undersigned, and jurisdiction and venue are proper. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in this matter. 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).

2. A court need not make findings as to every fact that arises from the evidence and need only find those facts which are material to the settlement of the dispute. *Flanders v. Gabriel*, 110 N.C. App. 438, 440, 429 S.E. 2d 611, 612, *aff'd*, 335 N.C. 234, 436 S.E. 2d 588 (1993).

Article 3A Case Procedure

3. Pursuant to 12 NCAC 10B .0201(b), before taking action against an agency, school, or individual for a violation, Respondent "**shall investigate** the alleged violation

and, when required by the Director, shall present a report of its findings to the Probable Cause Committee of the Commission.” (Emphasis added) After an investigation, Respondent’s Probable Cause Committee may convene to consider investigative reports and determine whether probable cause exists that the Commission’s rules have been violated, or it may delegate authority to the Director for further action.

4. If a person appeals the Probable Cause Committee’s finding of probable cause to take an agency action, then N.C. Gen. Stat. § 150B-38(b) requires the agency, before taking any action, to give the parties an opportunity for a hearing without undue delay and notice not less than 15 days before the hearing. Notice to the parties shall include:

- (1) A statement of the date, hour, place, and nature of the hearing;
- (2) **A reference to the particular sections of the statutes and rules involved; and**
- (3) **A short and plain statement of the facts alleged.**

(Emphasis added)

5. N.C. Gen. Stat. §§ 150B-40, 150B-41, and 150B-42 establish how an Article 3A contested case hearing is conducted including the presentation of evidence, arguments on the issues or policies, and the evidence to be considered during such hearing. N.C. Gen. Stat. § 150B-41(b) specifically states that “[o]ther factual information or evidence shall not be considered in determination of the case, except as permitted under subsection (d) of this section.” Likewise, N.C. Gen. Stat. § 150B-42(a) declares that “Findings of Fact shall be based exclusively on the evidence and on matters officially notices.” The plain language of N.C. Gen. Stat. § 150B-38, read in conjunction with the other statutes under Article 3A, Chapter 150B of the North Carolina General Statutes, is clear that the evidence at a contested case hearing is limited to the particular statutes and rules involved, the facts alleged in Respondent’s Notification of Probable Cause issued to an applicant or certified officer, and evidence submitted in rebuttal.

6. Pursuant to the requirements of N.C. Gen. Stat. § 150B-38(b) and Respondent’s January 28, 2019 Notification of Probable Cause, the particular statutes and rules involved and the facts at issue in this case were whether substantial evidence exists to deny Petitioner’s application for justice officer certification for:

- (1) committing the Class B misdemeanor offense of “Willfully Failing to Discharge Duties” in violation of N.C. Gen. Stat. § 14-230 in 2016 while employed as a certified law enforcement officer with the North Carolina State Highway Patrol officer, and
- (2) no longer possessing the good moral character required of all justice officers. Resp. Ex. 2.

Commission of Class B Misdemeanor

7. 12 NCAC 10B .0204(d)(2) provides that Respondent may deny certification of a criminal justice officer when the Commission finds that the applicant has committed a Class B misdemeanor within five years prior to the date of appointment.

8. 12 NCAC 10B .0103(16) provides that the term "Commission" as it pertains to criminal offenses means:

[A] finding by the North Carolina Sheriffs' Education and Training Standards Commission or an administrative body, pursuant to the provisions of G.S. 150B, that a person **performed the acts necessary to satisfy the elements of a specified criminal offense.**

(Emphasis added)

9. 12 NCAC 10B .0103(10)(b)(i) defines a "Class B Misdemeanor" as:

[A]n 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.

10. "Willfully Failing to Discharge Duties" in violation of North Carolina General Statute § 14-230 is a Class B Misdemeanor according to the "Class B Misdemeanor Manual."

11. The essential elements of the offense of "Willfully Failing to Discharge Duties" described in N.C. Gen. Stat. § 14-230 has two components: (1) that the defendant be an official of a State institution, and (2) that he willfully failed to discharge the duties of his office. Additionally, injury to the public is a judicially recognized element of the crime. *State v. Birdsong*, 325 N.C. 418, 384 S.E.2d 5 (1989). Specifically, injury to the public must occur as a consequence of the omission, neglect or refusal. *State v. Rhome*, 120 N.C. App. 278, 462 S.E.2d 656 (1995).

12. In this case, Petitioner's role of being a Highway Patrol officer satisfies the first element of the subject offense. See, e.g., *State v. Fesperman*, 264 N.C. 160, 141 S.E.2d 255 (1965); *State v. Teeter*, 264 N.C. 162, 141 S.E.2d 253 (1965); *State v. Stogner*, 264 N.C. 163, 141 S.E.2d 248 (1965); *State v. Hord*, 264 N.C. 149, 141 S.E.2d 241 (1965).

13. Respondent's investigation into Petitioner's conduct as a Patrol sergeant was adequate enough for the Probable Cause Committee to find probable cause for a hearing on the merits in this matter. However, such investigation was insufficient, standing alone, to prove the charges at issue in this contested case hearing.

14. Once probable cause is found to exist, and the Notice of Probable Cause is appealed to a contested case hearing, the scope of evidence allowed during such hearing is established Article 3A, Chapter 150B of the North Carolina General Statutes.

15. The substantial evidence, through testimony and documentation, at this contested case hearing on the merits established the second element of the “Willful Failing to Discharge Duties” offense.

a. Petitioner’s duties required him to be present in Wayne County when on-duty, as that was his duty station. In early 2016, numerous superiors emphasized this fact to Petitioner. However, between September 22, 2016 and November 11, 2016, Petitioner failed to leave his home and report to his duty station on numerous occasions.

b. At no time did Petitioner contact Patrol troopers or his superiors and tell them that he was not at his duty station and that he needed coverage.

c. Petitioner admitted that on occasion he drove home for lunch and stayed at home for extended periods of time while he was on-duty. Petitioner admitted that on multiple occasions, he returned to his residence before the end of his shift and remained there for the remainder of his shift. Petitioner also admitted that he signed on as on-duty and stayed home for his entire shift on some days. Petitioner admitted that when he was on-duty at his residence he should have been in Wayne County. Petitioner admitted this was a violation of Patrol policy.

16. Petitioner admitted that time spent at his residence was nonetheless time he claimed hours worked for the Patrol. Petitioner received compensation for his alleged working hours. The State was deprived of the services for which it subsequently paid Petitioner based upon his false assertions, and Wayne County was deprived of his Patrol services. This amounts to injury to the public.

17. Accordingly, substantial evidence presented at hearing support the Probable Cause Committee’s finding that Petitioner committed the crime of “Willfully Failing to Discharge Duties” in violation of North Carolina General Statute § 14-230.

Maintain Good Moral Character

18. Pursuant to 12 NCAC 10B .0204(b)(2), Respondent “shall revoke, deny, or suspend the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer: “fails to meet or maintain any of the employment or certification standards required by 12 NCAC 10B .0300.” One of these minimum standards of employment is that the applicant be of good moral character pursuant to 12 NCAC 10B. 0301(a)(8).

19. Good moral character has been defined as “honesty, fairness, and respect for the rights of others and for the laws of the state and nation.” *In re Willis*, 288 N.C. 1, 10, 215 S.E.2d 771, 779 (1975), *appeal dismissed*, 423 U.S. 976, 96 S. Ct. 389, 46 L. Ed. 2d 300 (1975).

20. In this case, Petitioner was dishonest and untruthful when he reported he was performing his duties as a Patrol sergeant assigned to Wayne County, when in fact he was at home in Wake County on numerous occasions. He did not respect the rights of those members of the public of Wayne County who are entitled to law enforcement protection – rights which he was sworn to protect. He failed to uphold the laws of this State as a Patrol officer while remaining at his home while on-duty for the Patrol.

21. In addition, Petitioner submitted false time and mileage sheets, thereby defrauding the State, and falsely claiming to have been actively serving members of the community. Petitioner’s untruthfulness in such actions demonstrate a lack of good moral character at that time.

22. Generally, isolated instances of conduct are insufficient to properly conclude that someone lacks good moral character. *In Re Rogers*, 297 N.C. 48, 59, 253 S.E. 2d 912, 919 (1979).

23. In Petitioner’s case, the aforementioned conduct did not occur one time, but occurred multiple times over the course of weeks or months in 2016, even after being cautioned about such conduct by his superiors. Moreover, Petitioner’s profound lack of candor and truthfulness while testifying under oath at this contested case demonstrated that truthfulness is still a challenge for Petitioner.

24. Nonetheless, Sheriff Greene and Principal Johnson established that Petitioner has rehabilitated and rebuilt his character, since being fired by the Patrol, and as a deputy sheriff, and as school resource officer and coach at East Columbus High School. For two and a half years, Petitioner’s service as a deputy sheriff has been nothing but exemplary both of that service and of Petitioner’s character while engaging in that service. Both Sheriff Greene and Principal Johnson, who have supervised and worked with Petitioner since 2017, opined not only was Petitioner of good moral character, but that his absence would actually be harmful to the students of East Columbus High School and to the Sheriff’s force, and would make the school less safe. Such testimony was credible, honest, and believable. Even given Petitioner’s cross-examination testimony at hearing, the totality of the evidence rebutted the finding by the Probable Cause Committee that Petitioner lacks the good moral character required of a justice officer and showed that Petitioner has rehabilitated his character since 2017.

25. 12 NCAC 10B .0205 provides:

When the Commission suspends, revokes, or denies the certification of a justice officer, the period of sanction shall be:

- (3) for an indefinite period, but continuing so long as the stated deficiency, infraction, or impairment continues to exist, where the cause of sanction is: . . .
 - (b) failure to meet or maintain the minimum standards of employment or certification;
 - . . .
 - (d) commission or conviction of offenses as specified in 12 NCAC 10B .0204(d)(2) . . .

The Commission may either reduce or suspend the periods of sanction where revocation, denial or suspension of certification is based upon the Subparagraphs set out in 12 NCAC 10B .0204(d) 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.

26. The sanction for the charges as issue here, under 12 NCAC 10B .0205(3)(b) and (d), continues for so long as the stated deficiency exists. As held in *In re Dillingham*, 188 N.C. 162, 124 S.E.130 (1924), when one seeks to establish a restoration of a character, the question becomes one of “time and growth.”

27. The credible and persuasive testimonies by Sheriff Greene and Principal Johnson demonstrated that Petitioner has restored his character so that he now possesses the good moral character required to continue certification as a deputy sheriff.

28. Based upon the foregoing Findings of Fact and Conclusions of Law, extenuating circumstances exist for the Commission to exercise its discretion under 12 NCAC 10B .0205 and reduce the sanction required under 12 NCAC 10B .0205(3).

PROPOSAL FOR DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby proposes that Respondent **DENY** Petitioner’s justice officer certification indefinitely based on the commission of the Class B Misdemeanor offense of “Willfully Failing to Discharge Duties” in violation of N.C. Gen. Stat. § 14-230. Extenuating circumstances exist to justify the Commission exercising its discretion and reducing the sanction in this case under 12 NCAC 10B .0205.

NOTICE

The **North Carolina Sheriffs' Education and Training Standards Commission** will make the Final Decision in this contested case. As the Final Decision maker, that agency is required to give each party an opportunity to file exceptions to this proposal for decision, to submit proposed findings of fact, and to present oral and written arguments to the agency pursuant to N.C. Gen. Stat. § 150B-40(e).

The undersigned hereby orders that agency to serve a copy of its Final Decision in this case on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6700.

This the 3rd day of June, 2020.



Melissa Owens Lassiter
Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service:

Jennifer J Knox
The Law Firm of Jennifer Knox, PC
jenknox74@gmail.com
Attorney For Petitioner

Ryan Frank Haigh
North Carolina Department of Justice
rhaigh@ncdoj.gov
Attorney For Respondent

Benjamin Zellinger
North Carolina Department of Justice
bzellinger@ncdoj.gov
Attorney For Respondent

This the 3rd day of June, 2020.



Jerrod Godwin
Administrative Law Judge Assistant
N.C. Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, NC 27609-6285
Phone: 919-431-3000